

REPUBLIC OF SOUTH AFRICA

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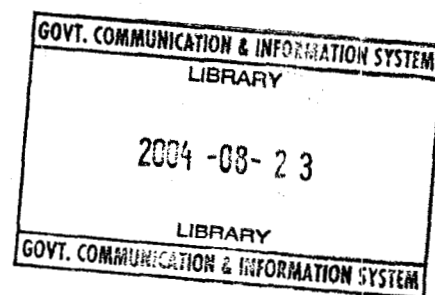
# IMMIGRATION AMENDMENT BILL

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*(As amended by the Portfolio Committee on Home Affairs (National Assembly))*  
*(The English text is the official text of the Bill)*

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(MINISTER OF HOME AFFAIRS)



[B11B—2004]

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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.

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# BILL

To amend the Immigration Act, 2002, so as to substitute the Preamble of the Act; to amend, insert or delete certain definitions; to provide for the delegation of powers and review procedures; to amend the composition and functions of the Immigration Advisory Board; to provide afresh for interdepartmental cooperation; to amplify and redefine the Minister's powers to make regulations and to amend the procedure in that regard; to provide for the clarification and revision of procedures and permits with regard to admission to, residence in and departure from the Republic; to clarify the appointment, powers and duties of inspectors; to further regulate the use of conveyances with regard to admission to the Republic; to repeal the provisions that provide for Immigration Courts; to provide afresh for the keeping of registers of lodgers by certain persons; to clarify the powers of immigration officers and police officers with regard to interviewing a person when they are not satisfied that the person is entitled to be in the Republic; to clarify the position with regard to certain offences; to correct certain important technical aspects in the text of the Act; to provide for the substitution for Schedule 3 to the Act of a new Schedule; to provide for certain transitional matters; and to provide for matters connected therewith.

**B**E IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

### Substitution of Preamble of Act 13 of 2002

1. The Preamble of the Immigration Act, 2002 (Act No. 13 of 2002), hereinafter referred to as the principal Act, is hereby substituted for the following Preamble:

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### "PREAMBLE

In providing for the regulation of admission of foreigners to, their residence in, and their departure from the Republic and for matters connected therewith, the Immigration Act aims at setting in place a new system of immigration control which ensures that—

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- (a) temporary and permanent residence permits are issued as expeditiously as possible and on the basis of simplified procedures and objective, predictable and reasonable requirements and criteria, and without consuming excessive administrative capacity;

- (b) security considerations are fully satisfied and the State retains control [on] over the immigration of foreigners to the Republic;
- (c) interdepartmental coordination [constantly enriches] and public consultations enrich the functions of immigration control [and that a constant flow of public inputs is present in further stages of policy formulation, including regulation making]; 5
- (d) [the needs and aspirations of the age of globalization are respected and the provisions and the spirit of the General Agreement on Trade in Services is complied with] economic growth is promoted through the employment of needed foreign labour, foreign investment is facilitated, the entry of exceptionally skilled or qualified people is enabled, skilled human resources are increased, academic exchanges within the Southern African Development Community is facilitated and tourism is promoted; 10
- (e) [border monitoring is strengthened to ensure that the borders of the Republic do not remain porous and illegal immigration through them may be effectively detected, reduced and deterred] the role of the Republic in the continent and the region is recognised; 15
- (f) the entry and departure of all persons at ports of entry are efficiently facilitated, administered and managed;
- (g) immigration laws are efficiently and effectively enforced, deploying to this end significant administrative capacity of the Department of Home Affairs, thereby reducing the pull factors of illegal immigration; 20
- (h) the South African economy may have access at all times to the full measure of needed contributions by foreigners;
- (i) the contribution of foreigners in the South African labour market does not adversely impact on existing labour standards and the rights and expectations of South African workers; 25
- (j) a policy connection is maintained between foreigners working in South Africa and the training of our [nationals] citizens;
- (k) push factors of illegal immigration may be addressed in cooperation with other Departments and the foreign states concerned; 30
- (l) immigration control is performed within the highest applicable standards of human rights protection[,]; [and]
- (m) xenophobia is prevented and countered [both within Government and civil society]; 35
- (n) a human rights based culture of enforcement is promoted;
- (o) the international obligations of the Republic are complied with; and
- (p) civil society is educated on the rights of foreigners and refugees.”.

#### Amendment of section 1 of Act 13 of 2002

2. Section 1 of the principal Act is hereby amended by— 40
- (a) the substitution for subsection (1) of the following subsection:
    - “(1) In this Act, unless the context [indicates] otherwise indicates—
    - [(i)] ‘admission’ means entering the Republic at a port of entry [on the basis of the authority to do so validly granted by this Act or by an immigration officer in terms of this Act, and the verb “to admit” has a corresponding meaning] in terms of section 9; 45
    - [(ii)] “*application*” means a request in the *prescribed* form which complies with the requirements and provides the information and documentation which may be *prescribed*];
    - [(iii)] ‘Board’ means the Immigration Advisory Board [contemplated in] established by section 4 [of this Act]; 50
    - [(iv)] ‘border’ means the national borders of the Republic [and includes ports of entry, coastlines and the outer margin of territorial waters];
    - [(v)] “*chartered accountant*” means a person referred to in section 1 of the Chartered Accountants Designation (Private) Act, 1993 (Act No. 67 of 1993) and includes an accountant, other than a *chartered accountant*, who is recognised as such under any law and who has been specifically or generally delegated by a *chartered accountant* to perform any or all activities contemplated in this Act;] 55 60

- [(vi)] 'citizen' has the meaning assigned thereto in the South African Citizenship Act, 1995 (Act No. 88 of 1995) **[and "*citizenship*" has a corresponding meaning];**  
'conveyance' means any ship, boat, aircraft or vehicle, or any other means of transport; 5
- [(vii)] 'corporate applicant' means a juristic person established under the laws of the Republic or of a foreign country which conducts business, not-for-gain, agricultural or commercial activities within the Republic and which applies for a corporate permit referred to in section 21 **[of this Act];** 10
- [(viii)] '**[Court] court**' means **[an Immigration Court established in terms of section 37 of this Act] a magistrate's court;**
- [(ix)] 'customary union' means a **[conjugal relationship according to indigenous law and custom and which is recognised and documented as prescribed]** customary union recognised in terms of the Recognition of Customary Marriages Act, 1998 (Act No. 120 of 1998); 15
- [(x)] 'Department' means the Department of Home Affairs;
- [(xi)] 'depart or departure' means exiting the Republic from a port of entry in compliance with this Act **[and the verb "*to depart*" has a corresponding meaning];** 20
- [(xii)] 'deport or deportation' means the action or procedure aimed at causing an illegal foreigner to leave the Republic **[involuntarily, or under detention]** in terms of this Act **[and the verb "*to deport*" has a corresponding meaning];** 25
- [(xiii)] 'Director-General' means the Director-General of the Department;
- [(xiv)] 'employer' includes **[the] a** person contractually bound by the applicable employment contract as an employer or, in the case of a juristic person, its chief executive officer or the person to whom such officer has delegated the final responsibility in respect of personnel matters; 30
- [(xv)] 'foreign country' means a country other than the Republic;
- [(xvi)] 'foreign state' means the juristic entity governing a foreign country;
- [(xvii)] 'foreigner' means an individual who is **[neither] not** a citizen **[nor a resident, but is not an illegal foreigner];** 35
- [(xviii)] 'illegal foreigner' means **[an] a** foreigner who is in the Republic in contravention of this Act **[and includes a prohibited person];**
- [(xix)] 'immediate family' means persons within the second step of kinship, where marriage or a spousal relationship is counted as one of such steps, but any common antecedent is not so counted; 40
- [(xx)] 'immigration officer' means an officer **[of the Department, or another person having the prescribed requirements, appointed as such from time to time by the Department and, for purposes of this Act, includes a person employed in, or contracted by, the Department who has been authorised by the Department to exercise certain powers and perform certain functions in the name of and on behalf of the Department]** appointed in terms of section 33; 45
- [(xxi)] 'marriage' means **[a legally sanctioned conjugal relationship intended to be permanent and concluded under the laws of the Republic, or]—** 50  
(a) a marriage concluded in terms of the Marriage Act, 1961 (Act No. 25 of 1961); or  
(b) a legal marriage under the laws of a foreign country [as prescribed from time to time, and includes a customary union]; 55
- [(xxii)] "**master**" means the **master of a ship** and refers to the person who at any given time is in charge or command of a ship;]
- [(xxiii)] 'Minister' means the Minister of Home Affairs;
- [(xxiv)] 'organ of **[State] state**' **[has the meaning] means an organ of state** as defined in section 239 of the Constitution; 60
- [(xxv)] 'owner' means the owner of record and**[, in the case of a ship, it] includes the charterer of [the ship] a conveyance** and any agent within the Republic of the owner or the charterer;

- [(xxvi)] 'passport' means any passport or travel document containing the prescribed information and characteristics issued—
- (a) under the South African **[Passport] Passports and Travel [Document] Documents Act, 1994 (Act No. 4 of 1994);**
  - (b) on behalf of a foreign state recognised by the Government of the Republic to a person who is not a citizen;
  - (c) on behalf of any international organisation as prescribed **[from time to time]**, including regional or sub-regional **[ones] organisations**, to a person who is not a citizen[; **and**], or
  - [(d)] any other document approved by the [Director-General after consultation with the] Minister and issued under special circumstances to a person who cannot obtain a document [referred to] contemplated in paragraphs (a) to (c);**
- 'permanent residence permit' means a permit contemplated in section 25, 26 or 27;
- [(xxvii)] 'port of entry' means a place **[prescribed from time to time]** designated as such by the Minister where **[a foreigner]** all persons **[has] have** to report before **[he or she]** they may **[move] enter**, sojourn or remain within, or **[enter]** depart from the Republic;
- [(xxviii)] 'premises' means any building, structure or tent, together with the land on which it is situated and the adjoining land used in connection with it, and includes any land without any building, structure or tent and any **[vehicle,] conveyance[, or ship];**
- [(xxix)] 'prescribed' means **[provided for]** prescribed by regulation[, the verb "to prescribe" has a corresponding meaning and "pre-scribed from time to time" refers to section 7(2)];
- [(xxx)] 'prohibited person' means any person **[referred to] contemplated** in section 29 **[of this Act];**
- [(xxxi)] **"publish"** means *publish* by notice in the *Government Gazette* and, to the extent possible and feasible under the circumstances, convey by mail or e-mail to parties or stakeholders who have requested their inclusion or have been included in mailing lists to be maintained by the *Department* in respect of subject matters in respect of which public input is called for by *this Act*, *prescribed*, advisable or expedient;]
- [(xxxii)] **"regulations"** means general rules adopted by the *Minister* after consultation with the *Board* in terms of *this Act* and *published*;]
- [(xxxiii)] 'Republic' means the Republic of South Africa **[and its territory];**
- [(xxxiv)] **"resident"** means the holder of a permanent residence permit referred to in section 25 of *this Act*;]
- [(xxxv)] **"ship"** includes any vessel, boat, aircraft or other *prescribed* conveyance;]
- [(xxxvi)] 'spouse' means a person who is a party to—
- (a) a marriage, or a customary union[;]; or
  - (b) **[to]** a permanent homosexual or heterosexual relationship **[which calls for cohabitation and mutual financial and emotional support, and is proven by a prescribed affidavit substantiated by a notarial contract and "spousal relationship" has a corresponding meaning]** as prescribed;
- [(xxxvii)] 'status' means the status of the person as determined by the relevant permanent or temporary residence permit **[issued] granted** to a person in terms of this Act **[and includes the rights and obligations flowing therefrom, including any term and condition of residence imposed by the Department when issuing any such permits];**
- [(xxxviii)] 'temporary residence permit' means a temporary residence permit **[referred to] contemplated** in section 10 **[of this Act];**
- [(ixl)] 'this Act' means this Act, including its schedules, and includes the regulations made pursuant thereto;
- [(xl)] **"training fund"** means the public record referred to in section 2(2)(g)(i) of *this Act*;]
- 'transit visa' means a transit visa contemplated in section 10B;

- [(xli)] 'undesirable person' means a person [referred to] contemplated in section 30 [of this Act];
- [(xlii)] 'visa' means [the prescribed endorsement issued upon application on the valid passport of a foreigner granting such foreigner the authority to proceed to the Republic to report for a prescribed examination to an immigration officer at the port of entry with a view to admission on a specified temporary residence, which at any time before admission may be withdrawn by the Department] the authority contemplated in section 10A to proceed to a port of entry;
- [(xliii)] 'work' [means business, commercial or remunerative activities within the Republic, excluding work on the basis of a permit referred to in sections 12 or 14, or work for a foreign employer pursuant to a contract which only partially calls for activities in the Republic, or work as a business or profession mainly based outside the Republic but requiring activities within the Republic] includes—
- (a) conducting any activity normally associated with the running of a specific business; or
  - (b) being employed or conducting activities consistent with being employed or consistent with the profession of the person, with or without remuneration or reward, within the Republic.”; and
- (b) the deletion of subsection (2).

#### Repeal of section 2 of Act 13 of 2002

3. Section 2 of the principal Act is hereby repealed.

#### Substitution of section 3 of Act 13 of 2002

4. The following section is hereby substituted for section 3 of the principal Act:

##### “Delegation of powers

3. (1) The Minister may, subject to the conditions that he or she may deem necessary, delegate any power conferred on him or her by this Act, excluding a power referred to in sections 3, 4, 5 and 7, to an officer or category of officers or an employee or category of employees or a person or category of persons in the Public Service, but shall not be divested of any power so delegated.
- (2) The Director-General may, subject to the conditions that he or she may deem necessary, delegate any power conferred on him or her by this Act to an officer or category of officers or an employee or category of employees or a person or category of persons in the Public Service, but shall not be divested of any power so delegated.”.

#### Amendment of section 4 of Act 13 of 2002

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

- (a) by the substitution for subsection (2) of the following subsection:

“(2) (a) The Board shall consist of—

- (i) (aa) the Director-General; and
- (bb) the Head of the National Immigration Branch of the Department;

- (ii) a representative of the following Departments, at least equivalent to the rank of Deputy Director-General:
    - (aa) Department of Defence;
    - (bb) Department of Education;
    - (cc) Department of Environmental Affairs and Tourism;
    - (dd) Department of Trade and Industry;
    - (ee) Department of Foreign Affairs;
    - (ff) Department of Justice and Constitutional Development;
    - (gg) Department of Labour;
    - (hh) Department of Safety and Security; and
    - (ii) National Treasury;
  - (iii) a representative, at least equivalent to the rank of Deputy Director-General, of the—
    - (aa) National Intelligence Coordinating Committee; and
    - (bb) South African Revenue Service;
  - (iv) a person representing organised business;
  - (v) a person representing organised labour; and
  - (vi) up to five individual persons appointed by the Minister on the basis of their knowledge, experience and involvement pertaining to immigration law, control, adjudication or enforcement.
- (b) The Minister shall designate from the members of the Board a Chairperson and Deputy Chairperson of the Board.”;
- (b) by the deletion of subsection (3);
- (c) by the substitution in subsection (4) for the words preceding paragraph (a) of the following words:
- “A member of the Board referred to in subsection (2)[(k)] (a)(iv), (v) and [(l)] (vi) shall—”;
- (d) by the substitution for subsection (5) of the following subsection:
- “(5) The administrative work connected with the performance of the functions of the Board shall be performed by officers of the Department, designated by the Director-General for that purpose.”;
- (e) by the deletion of subsection (6); and
- (f) by the deletion of subsection (8).

#### **Substitution of section 5 of Act 13 of 2002**

6. The following section is hereby substituted for section 5 of the principal Act:

#### **“Functions of Board**

##### **5. The Board shall—**

- (a) advise the Minister in respect of—
  - (i) the contents of regulations that may be made in terms of this Act;
  - (ii) the formulation of policy pertaining to immigration matters; and
  - (iii) any other matter relating to this Act on which the Minister may request advice; and
- (b) serve as the interdepartmental cooperation forum for all immigration matters.”.

#### **Repeal of section 6 of Act 13 of 2002**

7. Section 6 of the principal Act is hereby repealed.

#### **Substitution of section 7 of Act 13 of 2002**

8. The following section is hereby substituted for section 7 of the principal Act:

## “Regulations

7. (1) The Minister may, after consultation with the Board, make regulations relating to—

- (a) the powers and duties of immigration officers;
- (b) the steps to be taken to prevent the entry of illegal foreigners into the Republic and to facilitate the tracing and identification of illegal foreigners in, and their removal from, the Republic; 5
- (c) the procedure regulating the entry into and departure from the Republic of persons at a port of entry, and the requirements and conditions to be complied with at such a port; 10
- (d) the times and places of, and the manner of conducting, an enquiry relating to, or the examination of, persons entering or desiring to enter the Republic or who, having been found in the Republic, are suspected of being prohibited persons or unlawfully resident therein;
- (e) the permits and the certificates which may be issued under this Act, the requirements for the issuing of permits and certificates and the conditions to which such permits or certificates may be subjected, and the circumstances under which such permits or certificates may be cancelled or withdrawn; 15
- (f) the conditions upon which prohibited persons may be allowed to pass through the Republic while journeying or being conveyed to a place outside the Republic; 20
- (g) the forms of warrants, permits, certificates or other documents to be issued or used, or of declarations to be made, or of registers to be kept, for the purposes of this Act, and the particulars to be provided on or inserted in any such document, declaration or register; 25
- (h) the fees that may be charged in respect of overtime services required to be performed by immigration officers;
- (i) the fees that may be charged in respect of the application for and issuing of visas, permits and certificates and other services rendered in terms of this Act; 30
- (j) the steps to be taken to prevent the departure from the Republic of a person not in possession of a passport or other appropriate documentation;
- (k) the requirements and conditions which should be complied with by any person who, on behalf of any other person, applies for a permit referred to in sections 11 to 22 and 25 to 27, and the registration of an immigration practitioner contemplated in section 46; 35
- (l) the manner in which payment of a deposit contemplated in section 34(3) may be enforced; 40
- (m) the steps to be taken to ensure proper exploitation of the local labour market before a work permit is issued in terms of section 19;
- (n) the circumstances whereunder and the manner in which a penalty shall be incurred by and recovered from the owner, agent, charterer or person in control of a conveyance and who conveyed a foreigner contemplated in section 35(7) to the Republic; 45
- (o) any matter that may be prescribed under this Act; and
- (p) generally, any matter required for the better achievement of the objects and purposes of this Act.

(2) Different regulations may be made under subsection (1)(c) in respect of different ports of entry, and the forms of warrants, permits, certificates, documents, declarations or registers prescribed under subsection (1)(g) may differ in respect of different categories of persons. 50

(3) A regulation made under subsection (1) may provide that any person who contravenes a provision thereof or fails to comply therewith shall be guilty of an offence and on conviction be liable to a fine, or to imprisonment for a period not exceeding 12 months. 55

(4) The Minister may—

- (a) exempt a person or category of persons from paying fees prescribed under subsection (1)(h); and 60
- (b) withdraw an exemption granted to a person or a category of persons under paragraph (a).

(5) Any fee which may be prescribed under subsection (1) shall be prescribed by the Minister with the concurrence of the Minister of Finance.”.

#### Substitution of section 8 of Act 13 of 2002

9. The following section is hereby substituted for section 8 of the principal Act: 5

##### “Review and appeal procedures

8. (1) An immigration officer who refuses entry to any person or finds any person to be an illegal foreigner shall inform that person on the prescribed form that he or she may in writing request the Minister to review that decision and— 10

(a) if he or she arrived by means of a conveyance which is on the point of departing and is not to call at any other port of entry in the Republic, that request shall without delay be submitted to the Minister; or

(b) in any other case than the one provided for in paragraph (a), that request shall be submitted to the Minister within three days after that decision. 15

(2) A person who was refused entry or was found to be an illegal foreigner and who has requested a review of such a decision—

(a) in a case contemplated in subsection (1)(a), and who has not received an answer to his or her request by the time the relevant conveyance departs, shall depart on that conveyance and shall await the outcome of the review outside the Republic; or 20

(b) in a case contemplated in subsection (1)(b), shall not be removed from the Republic before the Minister has confirmed the relevant decision.

(3) Any decision in terms of this Act, other than a decision contemplated in subsection (1), that materially and adversely affects the rights of any person, shall be communicated to that person in the prescribed manner and shall be accompanied by the reasons for that decision. 25

(4) An applicant aggrieved by a decision contemplated in subsection (3) may, within 10 working days from receipt of the notification contemplated in subsection (3), make an application in the prescribed manner to the Director-General for the review or appeal of that decision. 30

(5) The Director-General shall consider the application contemplated in subsection (4), whereafter he or she shall either confirm, reverse or modify that decision. 35

(6) An applicant aggrieved by a decision of the Director-General contemplated in subsection (5) may, within 10 working days of receipt of that decision, make an application in the prescribed manner to the Minister for the review or appeal of that decision.

(7) The Minister shall consider the application contemplated in subsection (6), whereafter he or she shall either confirm, reverse or modify that decision.”. 40

#### Substitution of section 9 of Act 13 of 2002

10. The following section is hereby substituted for section 9 of the principal Act:

##### “Admission and departure 45

9. (1) Subject to this Act, no person shall enter or depart from the Republic at a place other than a port of entry.

(2) Subject to this Act, a citizen [or a resident] shall be admitted, provided that he or she identifies himself or herself as such [in the prescribed manner] and[, in the case of a resident,] the immigration officer records his or her entrance. 50

(3) No person shall [leave] enter or depart from the Republic—

(a) unless in possession of a valid passport[, or a certificate issued by the Department upon application in lieu thereof];

- (b) unless, if he or she is a person under the age of 16 years who does not hold a passport, he or she is accompanied by his or her parent who holds a passport in which his or her name was entered in terms of the **[provisions of the]** South African Passports and Travel Documents Act, 1994 (Act No. 4 of 1994), or on behalf of any government or international organisation recognised by the Government of the Republic; **[and]** 5
- (c) except at a port of entry, unless—
- (i) in possession of a certificate issued by the **[Department]** Director-General granting permission upon application to **[leave]** enter or depart from the Republic at a place other than a port of entry within a certain period not exceeding six months at a time, provided that for good cause **[an immigration officer]** the Director-General may withdraw such permission; or 10
  - (ii) exempted as an individual or falling within a category of persons exempted by the Minister, **[as he or she deems fit,]** on the recommendation of the Director-General, which exemption may be withdrawn by the **[Director-General at any time]** Minister; **[and]** 15
- (d) unless **[, in the case of a resident,]** the entry or departure is recorded by an immigration officer~~[,]~~; and 20
- (e) unless examined by an immigration officer as prescribed.
- (4) A foreigner who is not the holder of a permanent residence permit may only enter the Republic as contemplated in this section if— 25
- (a) **[by producing to an immigration officer]** his or her passport **[to be]** is valid for **[no]** not less than 30 days after the expiry of the intended stay~~[,]~~; and
  - (b) **[if]** issued with a valid temporary residence permit, as set out in this Act~~[,] and may only depart as set out in this Act].”~~. 30

#### Substitution of section 10 of Act 13 of 2002

11. The following section is hereby substituted for section 10 of the principal Act:

##### “Temporary residence permits

10. (1) Upon admission, a foreigner, who is not the holder of a permanent residence permit, may enter and sojourn in the Republic only if in possession of a temporary residence permit issued by the Director-General. 35
- (2) Subject to this Act, upon application **[and upon prescribed examination at the port of entry]** in the prescribed manner and on the prescribed form, one of the temporary **[residences]** residence permits **[set out]** contemplated in sections 11 to 23 may be issued to a foreigner. 40
- (3) If issued outside the Republic, a temporary residence permit is deemed to be of force and effect only after an admission.
- (4) A temporary residence permit is to be issued on condition that the holder is not or does not become a prohibited or an undesirable person.
- (5) The Director-General may **[For]** for good cause **[, as prescribed, the Department may]** attach reasonable individual terms and conditions as may be prescribed to a temporary residence permit. 45
- (6) Subject to this Act, a foreigner may apply to the Director-General in the prescribed manner and on the prescribed form to change his or her status or the conditions attached to his or her temporary residence permit, or both such status and conditions, as the case may be, while in the Republic. 50
- (7) Subject to this Act, the Director-General may, on application in the prescribed manner and on the prescribed form, extend the period for which a permit contemplated in subsection (2) was issued.
- (8) An application for a change in status does not provide a status and does not entitle the applicant to any benefit under the Act, except for those explicitly set out in the Act, or to sojourn in the Republic pending the decision in respect of that application. 55

(9) The Director-General may at any time in writing notify the holder of a temporary residence permit issued in terms of this section that, subject to subsection (10), the permit shall be cancelled for the reasons disclosed in the notice and that the holder is thereby ordered to leave the Republic within a period stated in that notice, and upon the expiration of that period the permit shall become null and void.

(10) The holder of a temporary residence permit who receives a notice contemplated in subsection (9) may, before the expiration of the period stated in that notice, make representations to the Director-General which he or she shall consider before making his or her decision.”.

## Insertion of sections 10A and 10B in Act 13 of 2002

12. The following sections are hereby inserted in the principal Act after section 10:

### “Visas

**10A.** (1) Any foreigner who enters the Republic shall, subject to subsections (2) and (4), on demand produce a valid visa, granted under subsection (3), to an immigration officer.

(2) Any person who holds a valid permit issued in terms of sections 13 to 22 and 25 to 27 shall, upon his or her entry into the Republic and after having been issued with that permit, be deemed to be in possession of a valid visa for the purposes of this section.

(3) A visa referred to in subsection (1)—

(a) may, subject to any condition that the Minister may deem fit, be granted by the Minister to any person who is not exempt, as contemplated in subsection (4), from the requirement of having to be in possession of a valid visa, and who has applied for such a visa in the prescribed manner and on the prescribed form;

(b) shall contain a statement to the effect that authority to proceed to the Republic to report to an immigration officer at a port of entry has been granted by the Minister to the holder of a passport, and such statement shall be endorsed in the passport concerned; and

(c) may for good cause be withdrawn and declared null and void by the Minister.

(4) The Minister may—

(a) exempt any person or category of persons from subsection (1) with regard to the requirement of having to be in possession of a valid visa in order to obtain a visitor's permit contemplated in section 11, for a specified or unspecified period and either unconditionally or subject to the conditions that the Minister may impose;

(b) exclude any person belonging to a category of persons contemplated in paragraph (a) from any exemption granted to that category; and

(c) withdraw any exemption granted in terms of paragraph (a) to any category of persons or to any person, and, in the case of a person, the Minister may do so irrespective of whether that person was exempted as an individual or as a member of a category of persons.

(5) Any person who contravenes subsection (1) shall be guilty of an offence and liable on conviction to a fine or imprisonment for a period not exceeding 12 months, and an immigration officer may—

(a) whether or not that person has been convicted of that offence, if that person is not in custody, arrest him or her or cause him or her to be arrested without a warrant;

(b) remove that person or cause him or her to be removed from the Republic under a warrant issued by the Minister; and

(c) pending the removal of that person, detain him or her or cause him or her to be detained in the manner and at a place determined by the Director-General.

(6) If a person has been convicted and sentenced under subsection (5), that person may before the expiration of that sentence be removed from the Republic in the manner contemplated in the said subsection.

### Transit visas

- 10B.** (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). 5
- (2) The Minister may, on the conditions that he or she may impose, authorise the issue of a transit visa to any person.
- (3) Any person who contravenes subsection (1) or who, while travelling through the Republic as contemplated in subsection (1), fails on demand by an immigration officer to produce a transit visa issued to him or her under subsection (2), or any holder of any such transit visa who contravenes any condition of that visa— 10
- (a) shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding two years; and 15
- (b) may be dealt with as an illegal foreigner, whether or not that person has been convicted or sentenced as contemplated in paragraph (a).
- (4) The Minister may—
- (a) exempt any person or category of persons from this section; 20
- (b) exclude any person belonging to a category of persons contemplated in paragraph (a) from any exemption granted to that category; and
- (c) withdraw any exemption granted under paragraph (a) to any category of persons or to any person and, in the case of a person, whether or not he or she was exempted as an individual or as a member of a category of persons.”. 25

### Amendment of section 11 of Act 13 of 2002

#### 13. Section 11 of the principal Act is hereby amended—

- (a) by the substitution for subsection (1) of the following subsection: 30
- “(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 [Department] Director-General in respect of a foreigner who—
- (a) [holds a visa; or] complies with section 10A; and
- (b) [is a citizen of a foreign state prescribed from time to time and] provides the financial or other guarantees prescribed [from time to time] in respect of his or her departure[.]; 35
- [provided] Provided that such permit—
- (i) [cannot] may not exceed three months and upon application may be renewed by the [Department,] Director-General for a further period which shall not exceed three months; or 40
- (ii) may be issued by the [Department] Director-General upon application for any period which may not [to] exceed three years to a foreigner who has satisfied the [Department] Director-General that he or she controls sufficient available financial resources, which may be prescribed [from time to time], and is engaged in the Republic in— 45
- (aa) an academic [sabbaticals] sabbatical;
- (bb) voluntary or charitable activities;
- (cc) research; or
- (dd) any other prescribed [activities and cases] activity.”;
- (b) by the substitution for subsection (2) of the following subsection: 50
- “(2) The holder of a visitor’s permit may not conduct work, unless authorised by the Director-General in the prescribed manner and subject to the prescribed requirements and conditions.”;
- (c) by the deletion of subsections (3) and (4);
- (d) by the substitution for subsection (5) of the following subsection: 55
- “(5) Special financial and other guarantees may be prescribed in respect of the issuance of a visitor’s permit to certain prescribed classes of foreigners [prescribed from time to time].”; and
- (e) by the addition of the following subsection:

“(6) Notwithstanding the provisions of this section, a visitor’s permit may be issued to a foreigner who is the spouse of a citizen or permanent resident and who does not qualify for any of the permits contemplated in sections 13 to 22: Provided that—

- (a) such permit shall only be valid while the good faith spousal relationship exists; 5
- (b) on application, the holder of such permit may be authorised to perform any of the activities provided for in the permits contemplated in sections 13 to 22; and
- (c) the holder of such permit shall apply for permanent residence contemplated in section 26(b) within three months from the date upon which he or she qualifies to be issued with that permit.”. 10

#### Repeal of section 12 of Act 13 of 2002

14. Section 12 of the principal Act is hereby repealed.

#### Amendment of section 13 of Act 13 of 2002 15

15. Section 13 of the principal Act is hereby amended—

- (a) by the substitution in subsection (1) for paragraph (a) of the following paragraph:  
“(a) the [Department] Director-General, as prescribed[,]; or[, **at the option of the applicant,**]”; and 20
- (b) by the substitution for subsection (2) of the following subsection:  
“(2) The Director-General shall, **[When]** when so requested by[,], and after consultation with[,], the Department of Education, **[the Department shall]** determine an ad hoc fee for the issuance of study permits in respect of institutions which are publicly funded or subsidised.” 25

#### Amendment of section 14 of Act 13 of 2002

16. Section 14 of the principal Act is hereby amended by the substitution for subsection (2) of the following subsection:

- “(2) **[The] A** treaty permit may be issued by— 30
- (a) the [Department] Director-General, as prescribed; or
- (b) the Department of Foreign Affairs or **[the other] another** organ of [State] state responsible for the implementation of the treaty concerned under a delegation from the [Department] Director-General, 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] Director-General; 35
- (ii) the organ of [State] state concerned satisfies the [Department] Director-General that, under the circumstances, it has the capacity to perform this function; and
- (iii) the permit is issued in accordance with the prescribed requirements, procedures and forms **[for the issuance of such permit are prescribed].**” 40

#### Substitution of section 15 of Act 13 of 2002

17. The following section is hereby substituted for section 15 of the principal Act:

##### “Business permit 45

15. (1) A business permit may be issued by the [Department] Director-General to a foreigner intending to establish[,], or invest in, or who has established or invested in a business in the Republic in which he or she may be employed, and an appropriate permit for the duration of the business permit to the members of such foreigner’s immediate family; 50  
**[provided] Provided** that—

- (a) such foreigner invests the prescribed financial or capital contribution in such business;

(b) the contribution referred to in paragraph (a) **[be] forms** part of the intended book value of such business; and

**[(c) a chartered accountant certifies compliance with the provisions of this Act,]**

**[(d)](c)** such foreigner has undertaken to comply with any relevant registration requirement set out in any law administered by the South African Revenue Service.

(2) The holder of a business permit may not conduct work other than work related to the business in respect of which the permit has been issued.

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

(4) The holder of a business permit shall **[cause the certification referred to in subsection (1)(c) to be renewed]** submit proof to the satisfaction of the Director-General that he or she has fulfilled the requirements contemplated in subsection (1)(a) within 24 months of the issuance of the permit, and within every two years thereafter.

(5) A business permit may be issued to a foreigner for more than one entry **[to a person]** if multiple entries into the Republic by that **[person]** foreigner over a period of time are necessary for that **[person]** foreigner to conduct the business in question effectively.”.

#### **Amendment of section 16 of Act 13 of 2002**

18. Section 16 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) The Director-General may, as prescribed, issue a crew permit to a foreigner who is a member of the crew of a conveyance.”.

#### **Amendment of section 17 of Act 13 of 2002**

19. Section 17 of the principal Act is hereby amended by the substitution for subsection (2) of the following subsection:

“(2) When so requested by[,], and after consultation with[,], the Department of Health, the **[Department]** Director-General shall determine an ad hoc fee for the issuance of medical treatment permits in respect of institutions which are publicly funded or subsidised.”.

#### **Amendment of section 18 of Act 13 of 2002**

20. Section 18 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) A relative’s permit may be issued for the prescribed period by the **[Department]** Director-General to a foreigner who is a member of the immediate family of a citizen or a permanent resident, provided that such citizen or permanent resident provides the prescribed financial assurance[,]

(a) **certified by a chartered accountant, or, at the applicant’s option,**

(b) **to be corroborated by relevant documentation to be evaluated by the Department that he or she has the means available to support such foreigner for the requested duration of such permit, either personally or through the contribution of such foreigner].**”.

#### **Substitution of section 19 of Act 13 of 2002**

21. The following section is hereby substituted for section 19 of the principal Act:

##### **“Work permit**

19. (1) A quota work permit may be issued by the **[Department]** Director-General, as prescribed, to a foreigner if the foreigner falls within a

specific professional category or within a specific occupational class determined by the Minister at least annually by notice in the *Gazette* after consultation with the Ministers of Labour and Trade and Industry, and as long as the number of work permits so issued for such category or class does not exceed the quota determined in the notice.

(2) A general work permit may be issued by the [Department] Director-General to a foreigner not falling within a category or class contemplated in subsection (1) if the prospective employer—

- (a) satisfies the [Department] Director-General in the manner prescribed that despite diligent search he or she has been unable to employ a person in the Republic with qualifications or skills and experience equivalent to those of the applicant;
- (b) produces certification from a chartered accountant that the terms and conditions under which he or she intends to employ such foreigner, including salary and benefits, are not inferior to those prevailing in the relevant market segment for citizens and residents, taking into account applicable collective bargaining agreements and other applicable standards, as recorded by the Department of Labour, if any, provided that—
  - (i) a copy of such certification shall be conveyed to a prescribed office of the Department of Labour; and
  - (ii) such certification shall lapse if objected to for good cause by such office of the Department of Labour within 15 calendar days of its receipt;
- (b) satisfies the Director-General in the prescribed manner that the terms and conditions under which he or she intends to employ that foreigner, including salary and benefits, are not inferior to those prevailing in the relevant market segment for citizens, taking into account applicable collective bargaining agreements and other applicable standards; and
- (c) has [committed] agreed in writing to notify the [Department] Director-General when such foreigner is no longer employed or is employed in a different capacity or role; and
- (d) has submitted a certification from a chartered accountant of the job description and that the position exists and is intended to be filled by such foreigner.]

(3) A general work permit contemplated in subsection (2) shall lapse if, within six months of its issuance, and within every year thereafter, its holder fails to submit satisfactory proof to the [Department] Director-General [certification from his or her employer's chartered accountant] that he or she is still employed and of the terms and conditions of his or her employment, including the job description: Provided that a general work permit shall remain valid for a period not longer than six months in respect of a holder whose employment contract has been terminated until that holder has exhausted all applicable rights of recourse: Provided further that the period may be extended for further periods of three months at a time on submission of proof to the satisfaction of the Director-General that, due to circumstances beyond the control of the holder, the recourse procedures have not been finalised.

(4) Subject to any prescribed requirements, an exceptional skills work permit may be issued by the [Department] Director-General to an individual [of] possessing exceptional skills or qualifications and to those members of his or her immediate family determined by the [Department] Director-General under the circumstances or [by regulation] as may be prescribed.

(5) An intra-company transfer work permit may be issued by the [Department] 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 years, provided that—

- [(a) a *chartered accountant* acting on behalf of the *employer* of such *foreigner* certifies that the *employer* needs to employ such *foreigner* within the *Republic* and such *foreigner's* job description;]
- [(b)](a) the employer undertakes that it will take [adequate or] prescribed measures to ensure that such foreigner will at all times comply with the provisions of this Act, and will immediately notify the [Department] Director-General if it has reason to believe otherwise; and
- [(c)](b) the employer furnishes the prescribed financial guarantees to defray deportation and other costs should such foreigner fail to depart when no longer allowed to sojourn in the Republic.
- (6) The holder of an intra-company transfer work permit may conduct work only for the employer referred to in subsection (5) and in accordance with the [job description and other elements contemplated in the certification referred to in subsection (5) or] requirements set out in his or her permit.”.

## Substitution of section 21 of Act 13 of 2002

22. The following section is hereby substituted for section 21 of the principal Act:

### “Corporate permit

21. (1) A corporate permit may be issued by the [Department] Director-General to a corporate applicant to employ foreigners who may conduct work for such corporate applicant.
- (2) After consultation with the Departments of Labour and [of] Trade and Industry, the [Department] Director-General shall determine the maximum number of foreigners to be employed in terms of a corporate permit by a corporate applicant, after having considered—
- [(a) the certification prepared by a *chartered accountant* on the basis of the relevant prescription or information of the *Department of Labour*, if any, that at any given time the relevant *foreigners* are employed on terms and conditions not inferior to those offered to *citizens* and *residents* or prevailing in the relevant market segment, taking into account collective bargaining agreements and other standards, if any;]
- [(b)](a) the undertaking by the corporate applicant that it will—
- (i) take [adequate or] prescribed measures to ensure that any foreigner employed in terms of the corporate permit will at [any time] all times comply with the provisions of this Act and the corporate permit; and
- (ii) immediately notify the [Department] Director-General if it has reason to believe that such foreigner is no longer in compliance with subparagraph [(i)] (i) [above];
- [(c)](b) the financial guarantees posted in the prescribed amount and form by the corporate applicant to defray deportation and other costs should the corporate permit be withdrawn, or certain foreigners fail to leave the Republic when no longer subject to the corporate permit; and
- [(d)](c) corroborated representations made by the corporate applicant in respect of the need to employ foreigners, their job descriptions, the number of citizens or permanent residents employed and their positions, and other prescribed matters.
- (3) The [Department] Director-General may withdraw or [modify] amend [the] a corporate permit for good and reasonable cause.
- (4) The Minister may, [In] after consultation with the Minister of Trade and Industry or Minerals and Energy or Agriculture, as the case may be, and the Minister of Labour, [may] designate certain industries, or segments thereof, in respect of which the Government may—
- (a) reduce or waive the requirements of subsection (2)[(d)](c); [or]
- (b) enter into agreements with one or more foreign states and set as a condition of a corporate permit that its holder—

- (i) employs foreigners partially, mainly or wholly from such foreign countries; and
  - (ii) remits a portion of the salaries of such foreigners to such foreign countries;
  - (c) apply this subsection in respect of foreigners required for seasonal or temporary peak period employment; or
  - (d) waive or reduce the requirement of subsection (2)(c)(b) under special conditions.
- (5) The holder of a corporate permit may also employ foreigners in terms of section 19.”.

#### Amendment of section 22 of Act 13 of 2002

23. Section 22 of the principal Act is hereby amended—

- (a) by the substitution for paragraph (a) of the following paragraph:
  - “(a) participating in a programme of cultural, economic or social exchange, organised or administered by an organ of [State] state or a [public higher education] learning institution, in conjunction with a learning institution or an organ of a foreign state, provided that—
  - (i) [after consultation with the Board, the Minister may delegate the authority to issue such permits to] such organ of [State] state or learning institution [if such organ of State has satisfied the Minister that it can ensure the compliance of such foreigner with this Act and report] reports to the [Department] Director-General on the stages and the completion of the relevant programme together with other prescribed information; and
  - (ii) it may be prescribed that, in respect of certain programmes, upon expiration of such permit such foreigner may not qualify for a status until he or she has complied with the requirement of a prescribed period of physical presence in his or her foreign country or of domicile outside the Republic; or”; and
- (b) by the substitution in paragraph (b) for subparagraph (iii) of the following subparagraph:
  - “(iii) such foreigner may not qualify for a [temporary or] permanent residence permit [until he or she has spent two years outside the Republic] within two years after the expiry of the exchange permit, which requirement may be waived by the [Department] Director-General in extraordinary circumstances.”.

#### Substitution of section 23 of Act 13 of 2002

24. The following section is hereby substituted for section 23 of the principal Act:

##### “Asylum transit permit

- 23. (1) The [Department] Director-General may issue an asylum transit permit to a person who at a port of entry claims to be an asylum seeker [subject to the Refugees Act, 1998 (Act No. 130 of 1998)], which permit shall be valid for a period of 14 days only [on any prescribed terms and conditions].
- (2) Despite anything contained in any other law, when the permit contemplated in subsection (1) expires before the holder reports in person to a Refugee Reception Officer at a Refugee Reception Office in order to apply for asylum in terms of section 21 of the Refugees Act, 1998 (Act No. 130 of 1998), the holder of that permit shall become an illegal foreigner and be dealt with in accordance with this Act.”.

#### Substitution of section 24 of Act 13 of 2002

25. The following section is hereby substituted for section 24 of the principal Act:

**“Cross-border and transit [passes] permits**

24. (1) The *[Department]* Director-General may issue a cross-border [pass with the same effect as a multiple admission visitor’s] permit to a citizen or a permanent resident or a foreigner who is a citizen or a resident of a prescribed foreign country with which the Republic shares a border [and who does not hold a passport but has received a prescribed identity document by the Department and is registered with the Department]. 5

(2) The *[Department]* Director-General may issue a transit *[visa]* permit authorising—

- (a) a foreigner travelling to a foreign country to make use of the transit facilities at a port of entry[.]; or 10
- (b) a foreigner to travel from a port of entry through the Republic to a foreign country.”.

**Amendment of section 25 of Act 13 of 2002**

26. Section 25 of the principal Act is hereby amended by the substitution for subsection (3) of the following subsection: 15

“(3) A permanent residence permit [is to] shall be issued on condition that the holder is not a prohibited or an undesirable person, and subject to section 28 [of this Act].”.

**Substitution of section 26 of Act 13 of 2002** 20

27. The following section is hereby substituted for section 26 of the principal Act:

**“Direct residence**

26. Subject to section 25, the *[Department shall]* Director-General may issue a permanent residence permit to a foreigner who—

- (a) has been the holder of a work permit, including one issued under a corporate permit, in terms of this Act for five years and has proven to the satisfaction of the Director-General that he or she has received an offer for permanent employment[, provided that— 25
  - (i) such foreigner submitted a certification from his or her prospective permanent employer’s chartered accountant of the job description and that the position exists and is intended to be filled by such foreigner; and 30
  - (ii) the Department of Labour certifies that the terms and conditions of such offer, including salary and benefits, are not inferior to those prevailing in the relevant market segment for citizens and residents, taking into account applicable collective bargaining agreements and other standards]; 35
- (b) [is] has been the spouse of a citizen or permanent resident for five years[, provided that] and the Director-General is satisfied that a good faith spousal relationship exists: Provided that such permit shall lapse if at any time within two years from the issuing of that permit the good faith spousal relationship no longer subsists, save for the case of death 40
  - [(i) the Department is satisfied that a good faith spousal relationship exists; and 45
  - (ii) such permit is issued on condition that it shall lapse if at any time within three years from its application the good faith spousal relationship no longer subsists, save for the case of death]; 50
- (c) is a child under the age of 21 of a citizen or permanent resident [under the age of 21], provided that such permit shall lapse if such foreigner does not submit an application for its confirmation within two years of his or her having turned 21 years of age; or
- (d) is a child of a citizen.”. 55

## Substitution of section 27 of Act 13 of 2002

28. The following section is hereby substituted for section 27 of the principal Act:

**“Residence on other grounds**

27. The *[Department]* Director-General may issue a permanent residence permit to a foreigner of good and sound character who— 5
- (a) has received an offer for permanent employment, provided that—
- (i) such foreigner **submitted a certification from a chartered accountant acting on behalf of such foreigner’s prospective permanent employer** has proven to the satisfaction of the Director-General that the position exists and that the position and related job description was advertised in the prescribed form and no suitably qualified citizen or permanent resident was available to fill it; 10
  - (ii) **the Department of Labour certifies that the terms and conditions of such offer, including salary and benefits, are not inferior to those prevailing in the relevant market segment for citizens or residents, taking into account applicable collective bargaining agreements and other standards, if any;** 15
  - (iii)(ii) the application falls within the yearly limits of available permits prescribed **[from time to time]** for each sector of industry, trade and commerce, after consultation with the Departments of Trade and Industry, Labour and Education; and 20
  - (iv)(iii) the permit may be extended to such foreigner’s spouse and children younger than 21 years of age; 25
- (b) taking into account any prescribed requirement, has demonstrated to the satisfaction of the *[Department]* Director-General that he or she possesses extraordinary skills or qualifications, and to those members of such foreigner’s immediate family determined by the *[Department]* Director-General under the circumstances or **[by regulation]** as may be prescribed; 30
- (c) intends to establish or has established a business in the Republic and investing in it or in an established business the prescribed financial contribution to be part of the intended book value **[as certified by a chartered accountant]**, and to the members of such foreigner’s immediate family, provided that— 35
- (i) the *[Department]* Director-General may waive or reduce such capitalisation requirements for businesses prescribed **[from time to time]** to be in the national interest or when so requested by the Department of Trade and Industry; and 40
  - (ii) the permit shall lapse if the holder fails to **[renew such certification]** 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 contribution to be part of the intended book value is still invested as contemplated in this paragraph; 45
- (d) is a refugee referred to in section 27(c) of the Refugees Act, 1998 (Act No. 130 of 1998), subject to any prescribed requirement;
- (e) intends to retire in the Republic, provided that **[a chartered accountant acting on behalf of such foreigner certifies that]** such foreigner proves to the satisfaction of the Director-General that he or she— 50
- (i) has the right to a pension or an irrevocable annuity or retirement account which will give such foreigner a prescribed minimum payment for the rest of his or her life; or 55
  - (ii) has a minimum prescribed net worth;

- (f) has [provided a certification by a chartered accountant] proven to the satisfaction of the Director-General that he or she has a prescribed minimum net worth and has paid a prescribed amount to the [Department] Director-General; or
- (g) is the relative of a citizen or permanent resident within the first step of kinship.”. 5

#### Amendment of section 28 of Act 13 of 2002

29. Section 28 of the principal Act is hereby amended—

- (a) by the substitution for the heading to the section of the following heading: 10  
**“Withdrawal of permanent residence permit”;**
- (b) by the substitution for paragraph (a) of the following paragraph:  
**“(a) [within four years of the issuance of such permit, has been] is** convicted of any of the offences listed in [Schedule] Schedules 1 and 2;”;
- (c) by the substitution for paragraph (b) of the following paragraph: 15  
**“(b) has failed to comply with the terms and conditions of his or her permit;”;**  
 and
- (d) by the substitution in paragraph (c) for subparagraph (iii) of the following subparagraph: 20  
**“(iii) the Minister[, on recommendation of the Director-General,] may** grant an exemption from the requirement of residence in respect of certain residents or class of residents;”.

#### Substitution of section 29 of Act 13 of 2002

30. The following section is hereby substituted for section 29 of the principal Act:

##### **“Prohibited persons”** 25

29. (1) The following foreigners are prohibited persons and do not qualify for a visa, admission into the Republic, a temporary or a permanent residence permit:

- (a) **[those]** Those infected with or carrying infectious, communicable or other diseases or viruses as prescribed **[from time to time]**; 30
- (b) anyone against whom a warrant is outstanding or a conviction has been secured in the Republic or a foreign country **[with which the Republic has regular diplomatic relations]** in respect of genocide, terrorism, murder, torture, **[drug trafficking]** drug-related charges, money laundering or kidnapping; 35
- (c) anyone previously deported and not rehabilitated by the [Department] Director-General in the prescribed manner;
- (d) a member of or adherent to an association or organisation advocating the practice of racial hatred or social violence; **[and]**
- (e) anyone who is or has been a member of or adherent to an organisation or association utilising crime or terrorism to pursue its ends[.]; and 40
- (f) anyone found in possession of a fraudulent residence permit, passport or identification document.

(2) **[After consultation with the]** The Director-General may, for good cause **[the Minister may]**, declare a person referred to in subsection (1) not to be a prohibited person.”. 45

#### Substitution of section 30 of Act 13 of 2002

31. The following section is hereby substituted for section 30 of the principal Act:

##### **“Undesirable persons”**

30. (1) The following foreigners may be declared undesirable by the [Department] Director-General, as prescribed, and after such declaration, do not qualify for a visa, admission into the Republic, a temporary or a permanent residence permit: 50

- (a) **[anyone]** *Anyone* who is or is likely to become a public charge;
  - (b) anyone identified as such by the Minister **[after consultation with the Board, or in the case of urgency, by the Minister who, in such cases, shall inform the Board as soon as practicable];**
  - (c) anyone who has been judicially declared incompetent; 5
  - (d) an unrehabilitated insolvent;
  - (e) anyone who has been ordered to depart in terms of this Act;
  - (f) anyone who is a fugitive from justice; and
  - (g) anyone with previous criminal convictions without the option of a fine for conduct which would be an offence in the Republic, with the exclusion of certain prescribed offences. 10
- (2) Upon application **[from]** by the affected person, the **[Department]** Minister may, for good cause, waive any of the grounds of undesirability **[provided that it reports such decisions to the Minister and the Board, with reasons]."** 15

#### Amendment of section 31 of Act 13 of 2002

32. Section 31 of the principal Act is hereby amended—

- (a) by the substitution in subsection (1) for paragraph (b) of the following paragraph:
 

"(b) the officers and crew of **[an official]** a public **[ship]** conveyance of a foreign state, while such **[ship]** conveyance is in the port of entry.";

 20
- (b) by the substitution for subsection (2) of the following subsection:
 

"(2) Upon application, the Minister[, as he or she deems fit, after consultation with the Board,] may under terms and conditions determined by him or her— 25

  - (a) allow a distinguished visitor and certain members of his or her immediate family and members in his or her employ or of his or her household to be admitted to and sojourn in the Republic **[for a period not exceeding six months]**, provided that such foreigners do not intend to reside in the Republic permanently; 30
  - (b) grant a foreigner or a category of foreigners the rights of permanent residence for a specified or unspecified period when special circumstances exist which would justify such a decision[;]; **[provided]** Provided that the Minister may—
    - (i) exclude one or more identified foreigners from such categories; and 35
    - (ii) for good cause, withdraw such rights from a foreigner or a category of foreigners;
  - [(c) authorise any person or category of persons to enter the Republic at a place other than a port of entry, in which case the Department shall issue to such person(s) the prescribed written permission or passport endorsement, provided that such authorisation may be withdrawn at any time by the Minister; and]** 40
  - [(d)](c)** for good cause, waive any prescribed requirement or form[, **provided that if such consultation requirement would unduly delay an urgent action, the Minister may inform the Board after the fact of any action taken under this subsection and of the reasons for the urgency.]; and** 45
  - (d)** for good cause, withdraw an exemption granted by him or her in terms of this section."; and
- (c) by the addition of the following subsection:
 

"(3) The provisions of sections 10 and 25 shall not apply to a foreigner— 50

  - (a) who prior to 1 February 1937 lawfully entered the Republic for the purpose of permanent residence therein;
  - (b) who by virtue of the Diplomatic Immunities and Privileges Act, 2001 (Act No. 37 of 2001), enjoys any immunities and privileges in the Republic; or 55
  - (c) to whom a written authority or permission to enter the Republic has been issued in terms of section 1 or 3 of the Immigration Quota Act, 1930 (Act No. 8 of 1930), and who entered the Republic within the period stated in that authority or permit or within that period as lawfully extended."

### Amendment of section 32 of Act 13 of 2002

33. Section 32 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) Any illegal foreigner shall depart, unless authorised by the **[Department]** Director-General in the prescribed manner to remain in the Republic pending his or her application for a status.”. 5

### Amendment of section 33 of Act 13 of 2002

34. Section 33 of the principal Act is hereby amended—

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

“(1) An inspectorate **[shall be]** is hereby established **[through regulations]** and shall consist of **[such]** the persons, including immigration officers, **[as may be]** determined by the Minister.”; 10

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

“(2) (a) **[On the recommendation of the Director-General, the]** The Minister shall appoint the head of the inspectorate. 15

(b) The Director-General shall appoint immigration officers and other persons required to exercise the functions of the inspectorate.

(c) The Minister may prescribe—

(i) the procedure to be followed in the appointment of immigration officers or categories of immigration officers; 20

(ii) the requirements for the appointment contemplated in subparagraph (i); and

(iii) the allocation of functions to immigration officers or categories of immigration officers.”; and

(c) by the substitution for subsection (4) of the following subsection: 25

“(4) An immigration officer may, for the purposes of this Act—

(a) at any time before the commencement or in the course of an investigation conduct an inspection in loco in accordance with subsections (5) and (9);

(b) by notice in writing call upon any person who is in possession of or has the custody of or control over any thing which in the opinion of the **[Department]** Director-General is relevant to the investigation to produce such thing, and the **[Department]** Director-General may inspect and retain any thing so produced for a reasonable time; and 30

(c) by notice in writing call upon any person to appear before the **[Department]** Director-General and to give evidence or to answer questions relevant to the subject matter of the investigation[.]; 35

**[provided]** Provided that any of such notices shall specify the time when and the place where the person to whom it is directed shall appear, be signed by an immigration officer, be served by an immigration officer or **[by]** a sheriff by delivering a copy thereof to the person concerned or by leaving it at such person's last known place of residence or business, and shall specify the reason why the **[article]** thing is to be produced or the evidence is to be given.”. 40

### Amendment of section 34 of Act 13 of 2002

35. Section 34 of the principal Act is hereby amended— 45

(a) by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:

“Without the need for a warrant, an immigration officer may arrest an illegal foreigner or cause him or her to be arrested, and shall, irrespective of whether such foreigner is arrested, deport him or her or cause him or her to be deported and may, pending his or her deportation, detain him or her or cause him or her to be detained in a manner and at **[the]** a place **[under the control or administration of the Department]** determined by the Director-General, provided that the foreigner concerned—”; 50

(b) by the substitution in subsection (5) for the words preceding paragraph (a) of the following words: 55

“Any person other than a citizen or a permanent resident who having been—”; and

(c) by the addition of the following subsection:

“(11) A person detained on a ship may not be held in detention for longer than 30 days without an order of court.”.

#### Substitution of section 35 of Act 13 of 2002

36. The following section is hereby substituted for section 35 of the principal Act: 5

##### “[Ships] Duties with regard to conveyances

35. (1) Save for extraordinary circumstances necessitating otherwise, no [master] person in charge of a conveyance shall cause [his or her ship] that conveyance to enter the Republic [by landing or shoring] at any place other than a port of entry. 10

(2) An immigration officer or other authorised person employed by the [Department] Director-General may—

(a) board any [ship] conveyance which is entering or has entered into any port of entry and for good cause prohibit or regulate disembarkation from, or the offloading of, such [ship] conveyance in order to ascertain the status or citizenship of its passengers; and 15

(b) request the person in control of a port of entry or any person acting under his or her authority to order the [master] person in charge of a conveyance to park, moor or anchor [his or her ship] that conveyance in such port of entry at such distance from the shore or landing place or in such position as he or she may direct. 20

(3) The [master of a ship] person in charge of a conveyance entering or prior to entering a port of entry shall upon demand [shall] deliver to an immigration officer—

(a) a list stating— 25

(i) the names of all passengers on board the [ship] conveyance, classified according to their respective destinations; and

(ii) such other details as may be prescribed [from time to time];

(b) a list of stowaways, if any have been found;

(c) a list of the crew and all other persons, other than passengers and stowaways, employed, carried or present on the [ship] conveyance; and 30

(d) a return, under the hand of the medical officer of that [ship] conveyance or, if there is no such medical officer, under the hand of the [master] person in charge of a conveyance himself or herself, stating— 35

(i) any cases of disease, whether infectious or otherwise, which have occurred or are suspected to have occurred upon the voyage;

(ii) the names of the persons who have suffered or are suffering from such disease; 40

(iii) details of any birth or death which occurred upon the voyage between such port of entry and a previous port; and

(iv) any other prescribed matter or event[.];

[provided] Provided that such immigration officer may— 45

(aa) exempt from the requirements of this subsection the master of a ship destined for any other port in the Republic, subject to compliance with the duty to deliver such lists or return at such port and with any directive such immigration officer may issue to the master; and

(bb) if satisfied that a name should be added to or deleted from any of such lists, authorise such addition or deletion. 50

(4) If a [ship] conveyance arrives at a port of entry with a passenger on board bound for a destination outside the Republic who is not on board when the [ship] conveyance leaves such port of entry and has not been admitted, the [master] person in charge or the owner of that [ship] conveyance shall forfeit a sum fixed by the immigration officer within a prescribed limit. 55

(5) An immigration officer may require the [master of a ship] person in charge of a conveyance to muster the crew of such [ship] conveyance on the arrival of such [ship] conveyance in any port of entry and again before it leaves such port of entry.

(6) The competent officer of customs at any [harbour] port of entry may refuse to give to the [master of any ship] person in charge of a conveyance clearance papers to leave that [harbour] port of entry, unless he or she has complied with [the provisions of] this Act and produced a certificate of an immigration officer to that effect.

(7) A [master] person in charge of a conveyance shall ensure that any foreigner conveyed to a port of entry—

(a) for purposes of travelling to a foreign country, holds a valid passport and transit visa, if required[.]; and

(b) holds a valid passport and visa, if required.

(8) A person in charge of a conveyance shall be responsible for the detention and removal of a person conveyed if such person is refused admission in the prescribed manner, as well as for any costs related to such detention and removal incurred by the Department.”.

#### Repeal of section 36 of Act 13 of 2002

37. Section 36 of the principal Act is hereby repealed. 20

#### Repeal of section 37 of Act 13 of 2002

38. Section 37 of the principal Act is hereby repealed.

#### Substitution of section 40 of Act 13 of 2002

39. The following section is hereby substituted for section 40 of the principal Act:

##### “Keeping of registers of lodgers by certain persons 25

40. (1) The person in charge of any premises, whether furnished or unfurnished, where lodging or sleeping accommodation is provided for payment or reward shall, if those premises fall within a prescribed class, in the prescribed manner keep a register of all persons who are provided with lodging or sleeping accommodation thereon, and every such person shall sign the register and furnish therein the prescribed particulars regarding himself or herself. 30

(2) Every person in charge of premises referred to in subsection (1) shall, when required to do so by an immigration officer or police officer, produce the register referred to in that subsection for inspection. 35

(3) Any person who—

(a) contravenes or fails to comply with a provision of subsection (1) or (2);

(b) gives false or incorrect particulars for the purposes of subsection (1); or 40

(c) hinders any officer referred to in subsection (2) in the performance of his or her functions,

shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding 12 months.”.

#### Substitution of section 41 of Act 13 of 2002 45

40. The following section is hereby substituted for section 41 of the principal Act:

##### “Identification

41. (1) When so requested by an immigration officer or a police officer, any person shall identify himself or herself as a citizen, permanent resident or foreigner [when so requested by an immigration officer or a police 50

officer], and if on reasonable grounds such immigration officer or [a] police officer is not satisfied that such person is entitled to be in the Republic, such person may be interviewed by an immigration officer or a police officer about his or her identity or status, and such immigration officer or [a] police officer may take such person into custody without a warrant, and shall take reasonable steps, as may be prescribed, to assist the person in verifying his or her identity or status, and thereafter, if necessary detain him or her in [a prescribed manner and place until such person's prima facie status or citizenship is ascertained] terms of section 34. 5

(2) Any person who assists a person contemplated in subsection (1) to evade the processes contemplated in that subsection, or interferes with such processes, shall be guilty of an offence." 10

#### Amendment of section 43 of Act 13 of 2002

41. Section 43 of the principal Act is hereby amended by the substitution for paragraph (a) of the following paragraph: 15

"(a) abide by the terms and conditions of his or her status, including any terms and conditions attached to the relevant permit by the [Department] Director-General upon its issuance, extension or renewal, and that status shall expire upon the violation of those conditions; and".

#### Substitution of section 44 of Act 13 of 2002 20

42. The following section is hereby substituted for section 44 of the principal Act:

##### "Organs of [State] state

44. When possible, any organ of [State] state shall endeavour to ascertain the status or citizenship of the persons receiving its services and shall report to the [Department] Director-General any illegal foreigner, or any person whose status or citizenship could not be ascertained, [advising through public notices or directly the person concerned of such reporting practice,] provided that such requirement shall not prevent the rendering of services to which illegal foreigners and foreigners are entitled under the Constitution or any law[, including the law of contract]." 25 30

#### Substitution of section 45 of Act 13 of 2002

43. The following section is hereby substituted for section 45 of the principal Act:

##### "Other institutions

45. Prescribed institutions or persons other than organs of [State] state may, in the prescribed manner, be required [by regulation] to endeavour to ascertain the status or citizenship of the persons with whom they enter into commercial transactions, as prescribed, and shall report to the [Department] Director-General any illegal foreigner, or any person whose status or citizenship could not be ascertained, provided that such requirement shall not prevent the rendering of services or performance to which illegal foreigners and foreigners are entitled under the Constitution or any law[, including the law of contract]." 35 40

#### Repeal of section 47 of Act 13 of 2002

44. Section 47 of the principal Act is hereby repealed.

#### Amendment of section 49 of Act 13 of 2002 45

45. Section 49 of the principal Act is hereby amended—

(a) by the substitution for subsections (1) and (2) of the following subsections, respectively:

“(1)(a) Anyone who enters or remains in, or departs from the Republic in contravention of this Act, shall be guilty of an offence and liable on conviction to a fine or to imprisonment not exceeding three months.

(b) Any illegal foreigner who fails to depart when so ordered by the [Department] Director-General, shall be guilty of an offence and liable on conviction to a fine or to imprisonment not exceeding nine months. 5

(2) Anyone who knowingly assists a person to enter or remain in, or depart from the Republic in contravention of this Act, shall be guilty of an offence and liable on conviction to a fine or to imprisonment not exceeding one year.”; 10  
(b) by the substitution for subsections (6), (7), (8) and (9) of the following subsections, respectively:

“(6) Anyone failing to comply with one of the duties or obligations set out under sections [42] 38 to 46 [of this Act], shall be guilty of an offence and liable on conviction to a fine or to imprisonment not exceeding 18 months.

(7) Anyone participating in a conspiracy of two or more persons to conduct an activity intended to [violate] contravene this Act [repeatedly], shall be guilty of an offence and liable on conviction to a fine or to imprisonment not exceeding four years, provided that if part of such activity is conducted or intended to be conducted in a foreign country, the offence shall be punishable by imprisonment not exceeding four years without the option of a fine. 20

(8) Anyone who wilfully or through gross negligence produces a false certification contemplated by this Act, shall be guilty of an offence and liable on conviction to a fine or to imprisonment not exceeding one year[, and shall be suspended from the relevant professional association for a period not exceeding two years]. 25

(9) Anyone, other than a duly authorised civil servant, who [produces] manufactures or provides or causes the manufacturing or provision of a document purporting to be a document issued or administered by the Department, shall be guilty of an offence and liable on conviction to a fine or to imprisonment not exceeding two years.”; 30  
(c) by the substitution in subsection (11) for the expression “37(10)” of the expression “34(10)”;

(d) by the substitution for subsection (12) of the following subsection:  
“(12) A [Court] court may make an order as to costs in favour of the Department to the extent necessary to defray the [costs] expenses referred to in section [37]34(3) against— 35

(a) any illegal foreigner referred to in [subsection] section [37]34(3);

(b) any person who contravened section [45] 38 or 42;

(c) any person who conveyed into the Republic a foreigner without the required transit visa; or 40

(d) any person who committed an offence contemplated in [subsections] subsection (5), (7), (8) or (10),

which order shall have the effect of a civil judgment of that court.”; and

(e) by the addition of the following subsections:

“(13) Any person who pretends to be, or impersonates, an immigration officer shall be guilty of an offence and liable on conviction to a fine or to imprisonment not exceeding four years. 45

(14) Any person who for the purpose of entering or remaining in, or departing from, or of facilitating or assisting the entrance into, residence in or departure from, the Republic, whether in contravention of this Act or not, commits any fraudulent act or makes any false representation by conduct, statement or otherwise, shall be guilty of an offence and liable on conviction to a fine or to imprisonment not exceeding four years. 50

(15) Any person who—

(a) for the purpose of entering the Republic, or of remaining therein, in contravention of this Act, or departing from the Republic, or of assisting any other person so as to enter or so to remain or so to depart, utters, uses or attempts to use— 55

(i) any permit, certificate, written authority or other document which has been issued by lawful authority, or which, though issued by lawful authority, he or she is not entitled to use; or 60

- (ii) any fabricated or falsified permit, certificate, written authority or other document; or
  - (b) without sufficient cause has in his or her possession—
    - (i) any stamp or other instrument which is used or capable of being used for purposes of fabricating or falsifying or unlawfully recording on any document any endorsement under this Act or required to be submitted in terms of this Act; 5
    - (ii) any form officially printed for purposes of issuing any permit, certificate, written authority or other document under this Act or required to be submitted in terms of this Act, or any reproduction or imitation of any such form; 10
    - (iii) any passport, travel document, identity document or other document used for the facilitation of movement across borders, which is blank or reflects particulars other than those of the person in whose possession it is found; or 15
    - (iv) any fabricated or falsified passport, travel document, identity document or other document used for the facilitation of movement across borders, 20
- shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding four years. 20
- (16) Any person who—
- (a) contravenes or fails to comply with any provision of this Act, if such contravention or failure is not elsewhere declared an offence, or if no penalty is prescribed in respect of an offence; or
  - (b) commits any other offence under this Act in respect of which no penalty is elsewhere prescribed, 25
- shall be guilty of an offence and liable on conviction to a fine or to imprisonment not exceeding two years.”.

#### Amendment of section 50 of Act 13 of 2002

46. Section 50 of the principal Act is hereby amended by the substitution for subsection (3) of the following subsection: 30

“(3) Any owner or [*master of a ship*] person in charge of a conveyance who through negligence contravenes the provisions of section 35(7), shall be liable to an administrative fine of a prescribed amount not exceeding R10 000, which fine shall be imposed by the [*Department*] Director-General.”. 35

#### General

47. The principal Act is hereby amended—

- (a) by the substitution for italic type-face of ordinary type-face wherever it occurs in the text of the principal Act, excluding numbers; and
- (b) by the substitution for the word “*Department*” of the word “Director-General” in sections 13(1) and (3), 17(1), 20(2), 22, 25(4), 28, 33(13), 34(3) and (9), 38(4), 46(2) and (3) and 50(1) and (2), wherever it occurs. 40

#### Substitution of Schedule 3 to Act 13 of 2002

48. The following Schedule is hereby substituted for Schedule 3 to the principal Act:

“[Laws] Acts repealed [or amended] 45

No. and year of [law] Act	Short title	Extent of the repeal [or amendment]	
Act No. 96 of 1991 Act No. 75 of 1995	Aliens Control Act, 1991 Aliens Control Amendment Act, 1995	The whole repealed The whole repealed	50

### Transitional provisions

49. (1) Subject to this section—
- (a) the provisions of this Act shall not affect anything done or omitted in terms of the principal Act before the date of commencement of this Act; and
  - (b) anything done under the provisions of the principal Act prior to the commencement of this Act, which can be done under the principal Act as amended by this Act, shall be deemed to have been done under the principal Act as amended by this Act. 5
- (2) Despite section 4(7) of the principal Act, the Minister may on or after the date of commencement of this Act dissolve the Board and appoint a new Board: Provided that the tenure of the Board and Chairperson shall continue until such appointment becomes effective. 10
- (3) The staff appointed by the Board prior to the commencement of this Act shall be deemed to have been designated by the Director-General in terms of this Act.
- (4) All matters in respect of exemptions for consultation with the Board which were pending upon the date of promulgation of this Act must be disposed of by the Board prior to the appointment of the new Board contemplated in subsection (2). 15
- (5) An application for a permit in respect of section 26(b) of the principal Act, submitted prior to the amendment of that section by this Act, shall be dealt with and finalised in terms of that section prior to its amendment by this Act. 20

### Short title and commencement

50. This Act is called the Immigration Amendment Act, 2004, and comes into operation on a date determined by the President by proclamation in the *Gazette*.

## MEMORANDUM ON THE OBJECTS OF THE IMMIGRATION AMENDMENT BILL

### 1. PURPOSE OF BILL

The Bill contains proposed amendments to the Immigration Act, 2002 (Act No. 13 of 2002), hereinafter referred to as "the principal Act". The amendments seek to address a number of defects in the principal Act which were caused by its hurried passage through Parliament in 2003, as well as concerns raised by the Department of Home Affairs as a result of its experience in implementing the principal Act over the past year, by other departments and stakeholders, by the Immigration Advisory Board, and in Cabinet during its consideration of the draft Immigration Regulations early in 2004.

### 2. OBJECTS OF BILL

The following summarises the proposed amendments and other provisions contained in the Bill:

#### 2.1 Clause 1

This clause seeks to amend the Preamble of the principal Act by the deletion of superfluous provisions from the said Preamble.

#### 2.2 Clause 2

This clause amends section 1 of the principal Act.

The definition of "admission" is amended to remove the enabling nature of the definition. The enabling provision is provided for substantively elsewhere in the principal Act.

The definition of "application" is deleted as it is sufficiently dealt with in the principal Act.

The definition of "Board" has been amended to effect necessary grammatical corrections.

The definition of "border" is shortened to exclude superfluous provisions.

The definition of "chartered accountant" is deleted from the definition section of the principal Act as the requirement for chartered accountants in the principal Act has been found to be cumbersome and not very useful.

A definition for "conveyance" is introduced in the definition section to provide for a wider meaning than "ship", as vehicles, aircraft and other means of transport are also relevant at ports of entry.

A "court" is defined to mean a magistrate's court, as a result of the deletion of any reference to Immigration Courts in the principal Act. Any reference to a court in the principal Act will now relate to a magistrate's court.

A "customary union" is accorded the meaning given to it by the Recognition of Customary Marriages Act, 1998 (Act No. 120 of 1998).

The definition of "marriage" relates to marriages concluded in terms of the Marriage Act, 1961 (Act No. 25 of 1961), or any marriage concluded and recognised under a law of a foreign state.

The definition of "master" is deleted and the word is used only contextually in the principal Act.

The definition of "permanent residence permit" is inserted.

The definition of "port of entry" is amended to include the additional requirement for people depart from this place.

The definition of "publish" is deleted in accordance with the amendment of the regulation process in the principal Act.

The definition of "regulations" is deleted and the word is used only contextually in the principal Act.

The definition of "resident" is deleted as it referred to permanent residence permit holders to the exclusion of temporary residence permit holders.

The definition of "ship" is deleted and the word is used only contextually in the principal Act.

A new provision defining a "transit visa" is introduced, in line with newly introduced provisions dealing with visas.

The definition of "work" is amended to cover a wider scope of activities.

Subsection (2) is also deleted, as its provisions have become redundant.

### 2.3 Clause 3

This clause seeks to repeal the whole of section 2 of the principal Act headed "**Objectives and structures of immigration control**", as it does not serve any meaningful purpose.

### 2.4 Clause 4

This clause seeks to repeal the whole of section 3 of the principal Act dealing with "**Powers of Department**". The substituted clause introduces new provisions enabling both the Minister and the Director-General to delegate any of their functions and powers under the Act, except for some of the Minister's powers which have been specifically excluded. The proposed amendment also provides for internal review processes in that the Minister will be empowered to review any decision or steps taken in terms of the Act.

### 2.5 Clause 5

This clause extensively amends section 4 of the principal Act which deals with the establishment and composition of the Immigration Advisory Board. A new provision is introduced to include representation of the National Intelligence Coordinating Committee and the Department of Justice and Constitutional Development on the Board and to change the name of the Department of Finance to National Treasury; to set the level of representation of departments at Deputy Director-General level; to remove the need for the Minister to solicit public nominations for the "civil society representatives" on the Board; to provide for the Minister to designate one of the members of the Board as Chairperson and to provide for the appointment of a Deputy Chairperson.

### 2.6 Clause 6

This clause seeks to amend section 5 of the principal Act by the deletion of paragraphs (c) and (d) thereof so that the Board becomes a purely advisory body. The Board will no longer have powers to review the decisions of either the Department or the Director-General. It also seeks to emphasise the role of the Board in facilitating interdepartmental cooperation on immigration matters.

### 2.7 Clause 7

This clause repeals section 6 of the principal Act that mandates the Director-General to establish a liaison committee of departments involved in border control, as it is felt that existing forums already serve that purpose.

### 2.8 Clause 8

A new section dealing comprehensively with regulations is substituted for section 7 of the principal Act. This will have the effect of removing the requirement for public comments and for the Minister to respond to each comment in footnotes to the regulations. A list is provided in this clause regarding matters that the Minister may make regulations on in order to address concerns raised by the State Law Advisers that a number of the existing regulations are *ultra vires*.

### 2.9 Clause 9

This clause seeks to repeal the whole of section 8 of the principal Act which currently deals with adjudication and review procedures, as the provisions thereof are cumbersome and make effective immigration control unachievable. A new provision dealing with procedures regarding representations to the Director-General that is more user-friendly, is introduced.

**2.10 Clause 10**

This clause amends section 9 of the principal Act by including departure from the Republic amongst the prohibitions in subsection (1) and the substitution of “Director-General” for “Department” wherever the latter appears in this section. It also seeks to remove the provision that prevented recording of entry into and departure from the Republic of citizens.

**2.11 Clause 11**

This clause amends section 10(1) of the principal Act by qualifying the “foreigner” referred to in the principal Act as a person who does not have a permanent residence permit. Section 10(2) of the principal Act is amended to allow for the making of regulations in which the manner and form to be used in applying for the permits contemplated in sections 11 to 23 of the principal Act may be prescribed.

In order to bring the principal Act in line with other legislation, powers or functions are attributed to the Director-General and not the Department, as is the case in the principal Act. The amendment also empowers the Director-General to withdraw any of the temporary residence permits under certain conditions.

**2.12 Clause 12**

This clause inserts two new sections in the principal Act, namely sections 10A and 10B, which deal with visas and transit visas. The circumstances under which a foreigner is required to have either a visa or transit visa are set out therein. This will make the process of determining which countries are visa-exempt simpler and enable proper consultation by the Minister with other Government stakeholders.

**2.13 Clause 13**

This clause amends section 11 of the principal Act by the substitution for “Department” of “Director-General” wherever the first-mentioned appears in the text. A further amendment therein provides explicitly that renewal of a visitor’s permit shall be for a further period not exceeding three months. This will curb the tendency by some foreigners to apply continuously for the extension of a visitor’s permit.

**2.14 Clause 14**

This clause repeals section 12 of the principal Act. Diplomatic permits serve no purpose, as diplomats and their families are dealt with under the Diplomatic Immunities and Privileges Act, 2001 (Act No. 37 of 2001). Clause 32 provides for the necessary consequential amendment.

**2.15 Clauses 15 and 16**

These clauses amend sections 13 and 14 of the principal Act by the substitution of “Director-General” for “Department” wherever the latter appears in the text.

**2.16 Clause 17**

Section 15 of the principal Act is amended so that the provisions thereof apply also to a foreigner who has already invested in a business in the Republic and the certification by a chartered accountant is done away with. A further provision introduced herein is to enable the Director-General to issue appropriate permits to members of the business permit holder’s immediate family, which should not necessarily be business permits.

**2.17 Clauses 18 and 19**

These clauses amend sections 16 and 17 of the principal Act by the substitution of “Director-General” for “Department” wherever the latter appears in the text.

### 2.18 Clause 20

This clause seeks to amend section 18 of the principal Act by deleting paragraphs (a) and (b) of subsection (1) to remove the certification requirement of a chartered accountant.

### 2.19 Clause 21

Section 19 of the principal Act is amended by substituting "Director-General" for "Department" wherever the latter appears in the text, by deleting paragraphs (b) and (d) of subsection (2) of the principal Act to remove the certification requirement of a chartered accountant, and by other minor amendments.

### 2.20 Clause 22

Besides substituting "Director-General" for "Department" wherever the latter appears in the text, this clause further amends section 21 of the principal Act by deleting paragraph (a) of section 21(2) to remove the certification requirement of a chartered accountant. Subsection (4) is amended in such a manner that the designation of certain industries, or segments thereof, now rests with the Minister of Home Affairs, and not with the Minister of Labour as was the case prior to this amendment.

### 2.21 Clause 23

This clause seeks to amend section 22 of the principal Act in order to make it possible for an exchange permit to be issued in respect of programmes organised or administered by an educational institution other than a public educational institution. It also seeks to do away with the requirement of consultation with the Board in this regard.

### 2.22 Clause 24

While the principal Act provides for an asylum permit in section 23, this clause proposes the introduction of an asylum **transit** permit which is to be valid for 14 days to enable an asylum seeker to in person report to a Refugee Reception Officer at a Refugee Reception Office within that period to apply for an asylum seeker's permit in terms of the Refugees Act, 1998 (Act No. 130 of 1998). This will clearly distinguish the section 23 permits from asylum seeker's permits envisaged in section 22 of the Refugees Act, 1998. If that permit expires before the holder has reported to a Refugee Reception Office, he or she becomes an illegal foreigner and will be dealt with as such in terms of the principal Act.

### 2.23 Clause 25

This clause seeks to amend section 24 of the principal Act to provide for the issuing of transit permits to foreigners travelling to a foreign country, authorising them to make use of the transit facilities at a port of entry or to travel from a port of entry through the Republic to a foreign country.

### 2.24 Clause 26

This clause seeks to amend section 25 of the principal Act to add undesirable foreigners to those who cannot be granted a permanent residence permit.

### 2.25 Clauses 27 and 28

Sections 26 and 27 of the principal Act are amended to do away with the requirement of certification by a chartered accountant and the Department of Labour, as was provided for in the principal Act. Instead of furnishing a certificate by a chartered accountant, the foreigner will now have to prove certain matters to the satisfaction of the Director-General. Section 26 is also amended to provide that the Director-General "may" (in stead of "shall") issue a residence permit to certain categories of persons. Both sections 26 and 27 have also been amended in that "Director-General" is substituted for "Department" wherever the latter appears in the text.

**2.26 Clause 29**

The proposed amendment to section 28 of the principal Act will make it possible for the Director-General to withdraw a permanent residence permit the first time a holder is convicted of any of the offences listed not only in Schedule 1, but also Schedule 2 to the principal Act. The requirement that such conviction should be within four years of the issuance of the permanent residence permit is likewise dispensed with. The granting of an exemption from the requirement of residence in respect of certain residents or class of residents by the Minister is also no longer reliant on the recommendation of the Director-General.

**2.27 Clause 30**

Section 29 of the principal Act is amended to provide that anyone found in possession of a fraudulent residence permit, passport or identity document is regarded a prohibited person and therefore does not qualify for a temporary or permanent residence permit, a visa or admission into the Republic. Previously the Minister was empowered to, for good cause and after consultation with the Director-General, declare a person contemplated in section 29(1) not to be a prohibited person. This power is now conferred on the Director-General, and no consultation process is required.

**2.28 Clause 31**

Section 30 of the principal Act is amended to introduce a requirement that before an undesirable person may be admitted into the Republic, he or she will need to have a visa irrespective of whether or not he or she is a citizen of a visa exempted country. The need to consult with the Board is also dispensed with.

**2.29 Clause 32**

Section 31 of the principal Act is amended to delete from it the provision relating to authorisation of persons to enter the Republic at a place other than a port of entry as this has already been dealt with elsewhere in the amendment. It is also amended to remove the requirement that the Minister must consult with the Board in order to issue exemptions in terms of the Act, and to remove the six-month limitation on the granting of an exemption to a distinguished visitor. Provision is also made to confirm that the entry and residence of diplomatic personnel of foreign states are dealt with under the Diplomatic Immunities and Privileges Act, 2001.

**2.30 Clause 33**

This proposed amendment of section 32 of the principal Act will enable the Director-General to authorise any illegal foreigner who would otherwise have been required to leave the Republic, to remain pending the determination of his or her application for status.

**2.31 Clause 34**

Section 33 of the principal Act is amended in order to establish the Inspectorate in terms of the Act and not by regulation as in the past, and to authorise the Director-General to appoint immigration officers.

**2.32 Clause 35**

The amendment of section 34 of the principal Act seeks to delete the provision requiring the place for detention of illegal foreigners who are to be deported to be under the control and administration of the Department, and to allow the Director-General instead to determine places of detention. This will allow for the detention of illegal foreigners at police stations and other places in terms of the principal Act.

### **2.33 Clause 36**

This clause seeks to amend section 35 of the principal Act in order to refer to any mode of transport as "a conveyance", including ships, vehicles and aircraft, and to provide for the appropriate description of a person in charge of such a conveyance. It also seeks to compel persons in charge of such conveyances to ensure that their passengers are properly documented.

### **2.34 Clauses 37 and 38**

The provisions of sections 36 and 37 of the principal Act are repealed. Monitoring of entry into and exit from the Republic is already dealt with in clause 9 of the Bill, while it has been made explicitly clear in the definition section that "court" means a magistrate's court.

### **2.35 Clause 39**

This clause amends section 40 of the principal Act in order to introduce a requirement for all businesses offering accommodation to keep a register of all its foreign guests.

### **2.36 Clause 40**

This clause amends section 41 of the principal Act to authorise a police officer or immigration officer to interview any person in respect of whom he or she is not satisfied that the person may be in the Republic, before taking such person into custody. A further provision is introduced to deal with legal representatives who assist illegal foreigners to evade the provisions of the Act.

### **2.37 Clause 41**

This clause seeks to amend section 43 of the principal Act to provide for the expiry of a foreigner's status upon violation of any of the conditions attached to his or her permit.

### **2.38 Clause 42**

The amendment to section 44 of the principal Act dispenses with the requirement that an organ of state must advise through public notice of any person whose status or citizenship could not be ascertained.

### **2.39 Clause 43**

This clause amends section 45 of the principal Act by substituting "Director-General" for "Department" wherever the latter appears in the text and by deleting the last part of this section referring to the inclusion of the law of contract.

### **2.40 Clause 44**

The provisions of section 47 of the principal Act are repealed as they have become obsolete as a result of other amendments elsewhere in the Bill. The need for the Director-General to report annually to the Minister and to inform the Board on the measures and proposals aimed at increasing the efficacy, efficiency and cost-effectiveness of the Department is repealed as it is felt that this cannot be done through this Act.

### **2.41 Clause 45**

This clause amends section 49 of the principal Act by substituting "Director-General" for "Department" wherever the latter appears in the text and by including additional conduct which will constitute an offence.

**2.42 Clause 46**

This clause amends section 50 of the principal Act by deleting the reference to a "master of a ship" and replacing it with a "person in charge of a conveyance", and by substituting "Director-General" for "Department" wherever the latter appears in the text.

**2.43 Clause 47**

This clause deals with the correction of problematic italic type-face in the text of the principal Act and the substitution for the word "Department" of the word "Director-General" wherever it has not yet been corrected in the principal Act by this Bill.

**2.44 Clause 48**

Certain provisions of Schedule 3 to the principal Act, which will have the effect of amending the Refugees Act, 1998, are deleted (those provisions have not yet come into operation). If it should become necessary to amend the Refugees Act, 1998, this will be done in the said Act.

**2.45 Clause 49**

This clause contains transitional provisions.

**2.46 Clause 50**

This clause contains the short title of the Bill and provides for commencement at a date to be determined by the President.

**3. DEPARTMENTS/BODIES/PERSONS CONSULTED:**

- The General and Administrative Cabinet Committee;
- The Ministers of the Security Cluster;
- The Immigration Advisory Board, which includes representatives of relevant Departments and knowledgeable persons from the private sector;
- Functionaries from various Departments; and
- The State Law Advisers.

**4. IMPLICATIONS FOR PROVINCES**

None.

**5. FINANCIAL IMPLICATIONS FOR STATE**

Printing and distribution of new forms and training of officers of the Department in respect of the amendments.

**6. PARLIAMENTARY PROCEDURE**

The State Law Advisers and the Department of Home Affairs are of the opinion that the Bill must be dealt with in accordance with the procedure established by section 75 of the Constitution since it contains no provision to which the procedure set out in section 74 or 76 of the Constitution applies.