

REPUBLIC OF SOUTH AFRICA

IMMIGRATION AMENDMENT BILL

*(As introduced in the National Assembly (proposed section 75); explanatory summary of Bill published in Government Gazette No. 29169 of 31 August 2006).
(The English text is the official text of the Bill)*

(MINISTER OF HOME AFFAIRS)

[B 28—2006]

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[] Words in bold type in square brackets indicate omissions from existing enactments.

Words underlined with a solid line indicate insertions in existing enactments.

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

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

1. Section 1 of the Immigration Act, 2002 (Act No. 13 of 2002), hereinafter referred to as the principal Act, is hereby amended—

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

2. Section 10 of the principal Act is hereby amended by the substitution for subsection (2) of the following subsection:

“(2) Subject to this Act, upon application in the prescribed manner and on the prescribed form, one of the temporary residence permits contemplated in sections 11 to [23] 24 may be issued to a foreigner.”.

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

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

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

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

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

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

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

(a)] complies with section 10A[; and

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

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

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

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

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

[(cc)](iii) research; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Substitution of heading to Schedule 1 to Act 13 of 2002

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

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

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

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

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

Short title and commencement

12. This Act is called the Immigration Amendment Act, 2006, and comes into operation on a date determined by the President by proclamation in the *Gazette*. 50

MEMORANDUM ON THE OBJECTS OF THE IMMIGRATION AMENDMENT BILL, 2006

1. BACKGROUND

The main objective of the Bill is to define certain words and to substitute a definition, to provide for the clarification and revision of procedures and permits with regard to admission to, residence in and departure from the Republic, and to effect certain technical corrections to the Immigration Act, 2002 (Act No. 13 of 2002) (“the Act”).

2. OBJECTS OF THE BILL

The Bill seeks to include cross-border and transit permits (section 24 of the Act) as temporary residence permits referred to in section 10 of the Act. The Bill further seeks to increase the period for which an intra-company transfer work permit (section 19 of the Act) may be issued.

The Bill also seeks to provide for the issuing of an appropriate permit to the spouse and dependent children accompanying the holder of a retired person permit. It further provides for the withdrawal of a permanent residence permit if the holder thereof has been convicted of an offence in terms of the Act. Furthermore, the Bill seeks to provide for certain technical corrections to the Act.

3. DEPARTMENTS/BODIES CONSULTED

The draft Bill was forwarded to—

- Agriculture;
- American Chamber of Commerce;
- Anglo American;
- Arts and Culture;
- Chamber of Mines;
- Communications;
- Correctional Services;
- COSATU;
- Defence;
- Education;
- Environmental Affairs and Tourism;
- Foreign Affairs;
- German Chamber of Commerce;
- Government Communication and Information System;
- Health;
- Housing;
- Immigration Advisory Board;
- Independent Complaints Directorate (ICD);
- International Business Network;
- Institute for Democracy in South Africa (IDASA);
- Justice and Constitutional Development;
- Labour;
- Land Affairs;
- Lawyers for Human Rights;
- Law Society of South Africa;
- Law Society of the Northern Provinces;
- Legal Resources Centre;
- Minerals and Energy;
- National Intelligence Agency;
- National Treasury;
- National Union of Mineworkers;
- Provincial and Local Government;
- Public Enterprises;
- Public Service and Administration;
- Public Service Commission;
- Public Works;
- Science and Technology;
- Social Development;

- South African Human Rights Commission;
- South African Police Service (SAPS);
- South African Qualifications Authority;
- Sport and Recreation;
- Statistics South Africa;
- The Presidency;
- Trade and Industry;
- Transport; and
- Water Affairs and Forestry.

4. FINANCIAL IMPLICATIONS FOR STATE

None.

5. PARLIAMENTARY PROCEDURE

5.1 The State Law Advisers and the Department of Home Affairs are of the opinion that this 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.

5.2 The State Law Advisers are of the opinion that it is not necessary to refer this Bill to the National House of Traditional Leaders in terms of section 18(1)(a) of the Traditional Leadership and Governance Framework Act, 2003 (Act No. 41 of 2003), since it does not contain provisions pertaining to customary law or customs of traditional communities.