

REPUBLIC OF SOUTH AFRICA

IMMIGRATION BILL

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

(MINISTER OF HOME AFFAIRS)

[B 79B—2001]

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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.

BILL

To provide for the regulation of *admission* of persons to, their residence in, and their *departure* from the *Republic*; and for matters connected therewith.

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—

- (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, without consuming excessive administrative capacity;
- (b) security considerations are fully satisfied and the State retains control on the immigration of foreigners to the *Republic*;
- (c) interdepartmental coordination constantly enriches the functions of immigration control and that a constant flow of public inputs is present in further stages of policy formulation, including regulation making;
- (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;
- (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;
- (f) ports of entry are efficiently 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;
- (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*;
- (j) a policy connection is maintained between foreigners *working* in South Africa and the training of our nationals;
- (k) push factors of illegal immigration may be addressed in cooperation with other *Departments* and the *foreign states* concerned;
- (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.

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

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Definitions and interpretation

1. (1) In *this Act*, unless the context indicates otherwise—
 - (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; 35
 - (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 section 4 of *this Act*; 40
 - (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*; 45

- (vi) “*citizen*” has the meaning assigned thereto in the South African Citizenship Act, 1995 and “*citizenship*” has a corresponding meaning;
- (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*; 5
- (viii) “*Court*” means an *Immigration Court* established in terms of section 37 of *this Act*;
- (ix) “*customary union*” means a conjugal relationship according to indigenous law and custom and which is recognised and documented as *prescribed*; 10
- (x) “*Department*” means the *Department* of Home Affairs;
- (xi) “*departure*” means exiting the *Republic* from a *port of entry* in compliance with *this Act* and the verb “*to depart*” has a corresponding meaning;
- (xii) “*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; 15
- (xiii) “*Director-General*” means the *Director-General* of the *Department*;
- (xiv) “*employer*” includes the 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; 20
- (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 a *citizen* nor a *resident*, but is not an *illegal foreigner*; 25
- (xviii) “*illegal foreigner*” means an *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; 30
- (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*; 35
- (xxi) “*marriage*” means a legally sanctioned conjugal relationship intended to be permanent and concluded under the laws of the *Republic*, or under the laws of a *foreign country* as *prescribed* from time to time, and includes a *customary union*; 40
- (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*” has the meaning defined in section 239 of the Constitution;
- (xxv) “*owner*” means the *owner* of record and, in the case of a *ship*, it includes the charterer of the *ship* and any agent within the *Republic* of the *owner* or the charterer; 45
- (xxvi) “*passport*” means any *passport* or travel document containing the *prescribed* information and characteristics issued—
 - (a) under the South African Passport and Travel Document Act, 1994; 50
 - (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 *prescribed* from time to time, including regional or sub-regional ones, to a person who is not a *citizen*; and 55
 - (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 in paragraphs (a) to (c);
- (xxvii) “*port of entry*” means a place *prescribed* from time to time where a *foreigner* has to report before he or she may move, sojourn or remain within, or enter the *Republic*; 60
- (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 by regulation, the verb “to prescribe” has a corresponding meaning and “*prescribed* from time to time” refers to section 7(2); 5
- (xxx) “*prohibited person*” means any person referred to 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; 10
- (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; 15
- (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 party to a *marriage*, or a *customary union*, or 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; 20
- (xxxvii) “*status*” means the permanent or *temporary residence issued 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; 25
- (xxxviii) “*temporary residence*” means a permit referred to in section 10 of *this Act*;
- (ixl) “*this Act*” means *this Act*, including its schedules, and includes the *regulations* made pursuant thereto; 30
- (xl) “*training fund*” means the public record referred to in section 2(2)(g)(i) of *this Act*;
- (xli) “*undesirable person*” means a person referred to 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*; 35
- (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*. 40
- (2) In sections 15, 18, 19, 21, 26 and 27, whenever a certificate by a *chartered accountant* is called for, the applicant may instead elect that such certificate be furnished by another person to whom the facts contained in the certificate are known, but in every case where the certificate is issued to a person other than a *chartered accountant*, it shall be necessary for the *Department* to verify the facts itself. 45

OBJECTIVES AND STRUCTURES OF IMMIGRATION CONTROL 50

Objectives and functions of immigration control

2. (1) In the administration of *this Act*, the *Department* shall pursue the following objectives:
- (a) Promoting a human-rights based culture in both government and civil society in respect of immigration control; 55
- (b) facilitating and simplifying the issuance of permanent and *temporary residences* to those who are entitled to them, and concentrating resources and efforts in enforcing *this Act* at community level and discouraging *illegal foreigners*; 60
- (c) detecting and deporting *illegal foreigners*; 60

- (d) creating a climate of cooperation with other organs of State to encourage them to take responsibility in implementing *this Act* within the ambit of their respective powers and functions;
 - (e) preventing and deterring xenophobia within the *Department*, any sphere of government or *organ of State* and at community level; 5
 - (f) creating a climate of cooperation with communities and organs of civil society, including trade unions, to encourage them to cooperate with the *Department* to implement *this Act*;
 - (g) promoting a climate within the *Republic* which encourages *illegal foreigners* to depart voluntarily; 10
 - (h) ensuring that, subject to *this Act*, migration to and from the *Republic* takes place only at ports of entry and illegal crossing of the *borders* is deterred, detected and punished;
 - (i) promoting integration of functions, harmonisation and cooperative relations among all organs of State with responsibilities in respect of controlling the *borders* and activities at ports of entry; 15
 - (j) regulating the influx of *foreigners* and *residents* in the *Republic* to—
 - (i) promote economic growth, *inter alia*, by—
 - (aa) ensuring that businesses in the *Republic* may employ *foreigners* who are needed; 20
 - (bb) facilitating foreign investments, tourism and industries in the *Republic* which are reliant on international exchanges of people and personnel;
 - (cc) enabling exceptionally skilled or qualified people to sojourn in the *Republic*; 25
 - (dd) increasing skilled human resources in the *Republic*;
 - (ee) facilitating the movement of students and academic staff within the Southern African Development Community for study, teaching and research; and
 - (ff) promoting tourism; 30
 - (ii) where applicable, encouraging the training of *citizens* and *residents* by *employers* to reduce *employers*'s dependence on *foreigners*' labour and promote the transfer of skills from *foreigners* to *citizens* and *residents*;
 - (iii) enable family reunification;
 - (k) administering the *prescribed* fees, fines and other payments it exacts or receives in such a fashion as to defray the overall cost of its operation 35
 - (l) administering refugee protection and related legislation;
 - (m) administering *citizenship* by naturalisation and incidental matters relating thereto; and
 - (n) facilitating compliance with the *Republic*'s international obligations. 40
- (2) In order to achieve the objectives set out in subsection (1), the *Department* shall—
- (a) inspect *workplaces* in the *prescribed* manner to ensure that no *illegal foreigner* is employed and that *foreigners*, if any, are employed in the job description and at the terms and conditions set out in their *temporary residences*, and that the relevant training fees, if any, are paid; 45
 - (b) inspect institutions of learning to ensure that *illegal foreigners* are not enrolled therein;
 - (c) liaise with the South Africa Police Service to—
 - (i) ensure that the identity of people who are arrested, detained or convicted is checked for purposes of *this Act*; and 50
 - (ii) educate and instruct law-enforcing agencies to detect *illegal foreigners* and report them to the *Department*;
 - (d) liaise with the South African Revenue Service to ensure that the identity of people who contravene the provisions of the laws administered by the Commissioner for the South African Revenue Services is checked for purposes of *this Act*; 55
 - (e) educate communities and organs of civil society on the rights of *foreigners*, *illegal foreigners* and refugees, and conduct other activities to prevent xenophobia;
 - (f) in cooperation with the *Department* of Foreign Affairs— 60
 - (i) promote programmes in foreign countries with the aim of deterring people from becoming *illegal foreigners*; and

- (ii) table the need for cooperation in preventing migration towards the *Republic* on the agenda of relations with *foreign states*, negotiating appropriate measures and agreements with such *foreign states*;
- (g) maintain public records showing funds received or collected—
 - (i) under *this Act* from *employers* as training fees or fines, which, in the *prescribed* percentage, shall be known as the *training fund*; 5
 - (ii) from *foreign states* to defray the cost of repatriating *illegal foreigners* originating from their country, as determined through international relations and agreements;
 - (iii) from donors or other sources; and 10
 - (iv) from other fees and fines imposed or exacted by the *Department* in terms of *this Act* which, in the percentage *prescribed* from time to time, shall be known as the judicial assistance fund;
- (h) monitor and exact compliance from any person or entity exercising responsibilities or bearing duties or obligations in terms of *this Act*; 15
- (i) deport *illegal foreigners* who are unwilling to leave the *Republic* voluntarily;
- (j) train its investigative unit to detect *illegal foreigners*, monitor compliance with the terms and conditions of permits, control *borders*, and perform any other function under *this Act* or which may be delegated to it;
- (k) be empowered to contract through public tender with private persons to 20 perform under its control any of its functions, including but not limited to detaining and escorting *illegal foreigners* for *deportation* purposes and manning ports of entry;
- (l) administer ports of entry and monitor *borders* in terms of section 36 of *this Act*; and 25
- (m) conduct any other activity called for by *this Act* or necessary for or conducive to its implementation.

Powers of Department

3. (1) Subject to, and for the purposes of, *this Act*, through its duly authorised officers, the *Department* may— 30
- (a) enter *workplaces* and inspect employment records for the purposes of *this Act*;
 - (b) enter and inspect for purposes of *this Act* any place open to the public;
 - (c) exercise any powers relevant to, or necessary for, the functions set out in section 2(2);
 - (d) request any sphere of government or *organ of State* to— 35
 - (i) take actions or adopt procedures to ensure that the recipients of their services are identified as *citizens* and *residents* or *foreigners*; and
 - (ii) request that *prescribed* services, or licenses, or concessions or other actions be subject to proof of *status* or *citizenship*, 40
 provided that such requirements shall not prevent the rendering of such services to *illegal foreigners* when so required by the Constitution or a law;
 - (e) request anyone in the *Republic*, who is reasonably suspected of being an *illegal foreigner*, to identify himself or herself as a *citizen* or *resident*, or to produce a permit to be in the *Republic*;
 - (f) organise and participate in community fora or other community-based 45 organisation to deter xenophobia and involve the *citizenry* in the *application* and implementation of *this Act*, and educate the *citizenry* in migration issues;
 - (g) apprehend, detain and deport any *illegal foreigner*;
 - (h) despite any other law, represent the State in any proceedings in a *Court* in respect of any matter arising out of *this Act*; 50
 - (i) assist the public prosecution of any offence under *this Act*;
 - (j) enter into an agreement with any person, including any department of State, in terms of which the *Department* will be authorised to make use of any of the facilities, equipment or personnel belonging to, or under the control, or in the employment of such person or department; 55
 - (k) exercise any other power called for by *this Act*, or necessary for or conducive to its implementation; and
 - (l) delegate any of its powers and functions, provided that—
 - (i) the terms and conditions of such delegations are approved by the 60 *Minister* after consultation with the *Board*; and

- (ii) such delegation is performance audited by the *Director-General* and reviewed by the *Board* every twelve months to express a recommendation to the *Minister*, failing which it shall lapse.

(2) Subject to *this Act*, the powers and functions vested in the *Department* and the *Director-General* in terms of *this Act* shall be exercised and performed as directed by the *Minister*. 5

(3) The *Minister* may delegate to the *Director-General* any of the powers and functions vested in him or her in terms of *this Act*.

Immigration Advisory Board

4. (1) The Immigration Advisory *Board* is hereby established. 10

(2) The *Board* shall be chaired by a designee of the *Minister* and consist of—

- (a) one representative of the *Department* of Trade and Industry;
- (b) one representative of the *Department* of Labour;
- (c) one representative of the *Department* of Tourism;
- (d) one representative of the *Department* of Finance; 15
- (e) one representative of the *Department* of Safety and Security;
- (f) one representative of the South African Revenue Service;
- (g) one representative of the *Department* of Education;
- (h) one representative of the *Department* of Foreign Affairs;
- (i) one representative of the *Department* of Defence; 20
- (j) the *Director-General*;
- (k) up to five persons from civil society, including one representing organised labour and one representing organised business, appointed by the *Minister* after the *Minister* has given notice in the *Gazette* soliciting public nominations of such persons; and 25
- (l) up to four individuals appointed by the *Minister* on grounds of their expertise in administration, regulatory matters or immigration law, control, adjudication or enforcement.

(3) The *Board* shall meet when called by the Chairperson and—

- (a) shall meet regularly; 30
- (b) may determine its procedures at meetings;
- (c) may invite immigration officers and other employees of the *Department* to attend or participate in its meetings; and
- (d) may appoint committees from its members to assist in the performance of its functions. 35

(4) A member of the *Board* referred to in subsection (2)(k) and (l) shall—

- (a) serve for a four-year-term, at the expiry of which they shall be eligible for one or more re-appointments, provided that the *Minister* may elect to fill any vacancy which may occur by appointing a person for the unexpired portion of the term of the member in whose place such person is appointed; 40
- (b) at no time—
 - (i) be or become an unrehabilitated insolvent;
 - (ii) be or have been judicially declared of unsound mind;
 - (iii) suffer an infirmity of mind or body preventing him or her from the proper discharge of the duties of his or her office; 45
 - (iv) be convicted by final conviction or sentence of an offence without the option of a fine;
 - (v) be or become a political office bearer; or
 - (vi) be or have been removed from an office of trust on account of misconduct involving theft or fraud; 50
- (c) cease to be a member—
 - (i) on resignation;
 - (ii) if requested by the *Minister* to resign for good cause;
 - (iii) if he or she fails to attend two consecutive meetings of the *Board*, unless his or her apology has been accepted by the *Board*; or 55
 - (iv) if he or she becomes disqualified in terms of *this Act*; and
- (d) be paid such remuneration and be entitled to such benefits and allowances as determined from time to time by the *Minister* after consultation with the *Director-General* and with the approval of the *Minister* of Finance.

(5) The *Board* may request the *Department* to provide it with the necessary administrative capacity and assistance. 60

(6) The *Board* may establish and operate through committees to carry out its functions.

(7) The *Minister* may dissolve the *Board* on such terms and conditions as he or she sees fit, provided that a new *Board* shall be convened within 90 calendar days.

(8) The members of the *Board* who are not public servants shall be entitled to such remuneration and reimbursements as the *Minister* may determine from time to time in consultation with the *Minister* of Finance. 5

(9) Subject to *this Act*, the *Board* shall operate and meet as *prescribed*.

Functions of *Board*

5. The *Board* shall advise the *Minister* in respect of— 10

- (a) the contents of *regulations* made in terms of *this Act*;
- (b) the formulation of policy pertaining to immigration matters;
- (c) the implementation of immigration policy by the *Department*;
- (d) the reviewing of a decision of the *Department* in terms of section 8 if and when requested by *Minister*; 15
- (e) such other matters relating to *this Act* on which the *Minister* may request advice.

Inter-departmental co-operation

6. (1) The *Director-General* or his or her delegatee shall chair a liaison committee made up of senior employees representing the various departments which have functions relating to ports of entry. 20

(2) The liaison committee shall meet whenever necessary to discuss and agree on co-operation and co-ordination with regard to matters relating to the administration of ports of entry and the movement of goods and persons through ports of entry.

Regulation making 25

7. (1) The *Minister* shall have the power to make *regulations* called for, or conducive to, the implementation of *this Act* and in making *regulations* in terms of *this Act*, the *Minister* shall—

- (a) *publish* and table in Parliament his or her intention of adopting *regulations* specifying their subject matter and soliciting public comments during a period not shorter than 21 calendar days; 30
- (b) having considered public comments received, *publish* and table in Parliament draft *regulations* soliciting further comments during a period not shorter than 21 calendar days; and
- (c) *publish* the final *regulations* together with a summary of comments which have not been accommodated and the reasons for their rejection. 35

(2) Only subsection (1)(b) and (c) shall apply in respect of any *regulations* which *this Act* requires to be *prescribed* from time to time.

(3) The *Board* may request the *Minister* to—

- (a) reconsider any intended *regulations* prior to their promulgation; or 40
- (b) consider the need to adopt, repeal or amend *regulations*.

(4) Regulations shall be consistent with *this Act*, and shall not disregard the advice of the *Board* and public comments in an arbitrary or capricious manner: Provided that any regulation made in terms of this section shall be tabled within 30 days after its promulgation if Parliament is in session and if Parliament is in recess when the regulation is published, within 12 days after the resumption of the session. 45

Adjudication and review procedures

8. (1) Before making a determination adversely affecting a person, the *Department* shall notify the contemplated decision and related motivation to such affected person and give such person at least 10 calendar days to make representations, after which the *Department* shall notify such person that either such decision has been withdrawn or modified, or that it shall become effective, subject to subsection (2). 50

(2) Within 20 calendar days of its notification, the person aggrieved by an effective decision of the *Department* may appeal against it—

- (a) to the *Director-General*, who may reverse or modify it within 10 calendar days, failing which the decision shall be deemed to have been confirmed; or
 - (b) within 20 calendar days of modification or confirmation by the *Director-General*, if any, to the *Minister*, who may reverse or modify it within 20 calendar days, failing which the decision shall be deemed to have been confirmed, and be final, provided that in exceptional circumstances or when such person stands to be deported as a consequence of such decision—
 - (i) the *Minister* may extend such deadline; and
 - (ii) at the request of the *Department*, the *Minister* may request such person to post a bond to defray his or her *deportation* costs, if applicable; or
 - (c) within 20 calendar days of modification or confirmation by the *Minister*, if any, to a *Court*, which may suspend, reverse or modify it in accordance with its rules.
- (3) If not appealed in terms of subsection (2), a decision of the *Department* is final, subject to section 37 of *this Act*.
- (4) Any person adversely affected by a decision of the *Department* shall be notified in writing of his or her rights under this section and other *prescribed* matters, and may not be deported before the relevant decision is final.
- (5) Notwithstanding subsection (1), as soon as notified to the person concerned in terms of subsection (4), the decision of an immigration officer refusing entry into the *Republic* shall be effective for the purpose of subsection (1), and final for purposes of *deportation*, but subject to subsections (2) and (3).

ADMISSION AND DEPARTURE

Admission and departure

9. (1) Subject to *this Act*, no person shall enter 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.
- (3) No person shall leave the *Republic*—
- (a) unless in possession of a *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 or on behalf of any government or international organisation recognised by the Government of the *Republic*; and
 - (c) except at a *port of entry*, unless—
 - (i) in possession of a certificate by the *Department* granting permission upon *application* to leave 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 may withdraw such permission; or
 - (ii) exempted by the *Minister*, as he or she deems fit, on recommendation of the *Director-General*, which exemption may be withdrawn by the *Director-General* at any time; and
 - (d) unless, in the case of a *resident*, the *departure* is recorded by an immigration officer.
- (4) A *foreigner* may only enter the *Republic*—
- (a) by producing to an immigration officer his or her *passport* to be valid for no less than 30 days after the expiry of the intended stay, and
 - (b) if issued with a valid *temporary residence*, as set out in *this Act*, and may only depart as set out in *this Act*.

TEMPORARY RESIDENCE

Temporary residence permits

10. (1) Upon *admission*, a *foreigner* may enter and sojourn in the *Republic* only if in possession of a *temporary residence*. 5
- (2) Subject to *this Act*, upon *application* and upon *prescribed* examination at the *port of entry*, one of the *temporary residences* set out in sections 11 to 23 may be issued to a *foreigner*. 5
- (3) If issued outside the *Republic*, a *temporary residence* is deemed to be of force and effect only after an *admission*.
- (4) A *temporary residence* is to be issued on condition that the holder is not or does not become a prohibited or an undesirable person. 10
- (5) For good cause, as *prescribed*, the *Department* may attach reasonable individual terms and conditions to a *temporary residence*.
- (6) Subject to *this Act*, a *foreigner* may change his or her *status* while in the *Republic*.

Visitor's Permit

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11. (1) A visitor's permit may be issued by the *Department* in respect of a *foreigner* who—
- (a) holds a *visa*; or
 - (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*, 20
- provided that such permit—
- (i) cannot exceed three months and upon *application* may be renewed by the *Department*, or
 - (ii) may be issued by the *Department* upon *application* for any period not to exceed three years to a *foreigner* who has satisfied the *Department* that he or she controls sufficient available financial resources, which may be *prescribed* from time to time, and is engaged in the *Republic* in 25
 - (aa) academic sabbaticals
 - (bb) voluntary or charitable activities 30
 - (cc) research, or
 - (dd) other *prescribed* activities and cases
- (2) The holder of a visitor's permit may not conduct *work*.
- (3) An *illegal foreigner* receiving a visitor's permit shall comply with any terms and conditions which may be *prescribed* from time to time and provide the *prescribed* deposit to be forfeited to the *Department* in case of his or her non-compliance with *this Act*. 35
- (4) A visitor's permit may be issued for more than one entry if multiple entries into the *Republic* over a period not exceeding three months are requested by the person concerned. 40
- (5) Special financial and other guarantees may be *prescribed* in respect of the issuance of a visitor's permit to certain classes of *foreigners* *prescribed* from time to time.

Diplomatic permit

12. (1) A diplomatic permit may be issued by the *Department*, or by the *Department* of Foreign Affairs under delegation and in the *prescribed* manner and form and as directed by the *Department*, to— 45
- (a) an ambassador, a minister of a *foreign state*, a career diplomat or consular officer of a foreign government recognized de jure by the South African Government, or a representative of an international organisation *prescribed* from time to time, who is accepted by the *Minister* of Foreign Affairs; 50
 - (b) upon a basis of reciprocity, other officials or employees of a foreign government or international organisation contemplated in paragraph (a);
 - (c) a member of the *immediate family* of the *foreigners* contemplated in paragraphs (a) and (b);
 - (d) upon a basis of reciprocity, attendants, servants and personal employees of the *foreigners* contemplated in paragraphs (a) to (c); and 55
 - (e) other *prescribed* *foreigners* who are dignitaries of a *foreign state*.

(2) The holder of a diplomatic permit may not conduct *work*, provided that the *foreigners* referred to in subsection (1)(c) may combine such permit with a separately issued *work* permit.

Study permit

13. (1) A study permit may be issued to a *foreigner* intending to study in the *Republic* for longer than three months by— 5

- (a) the *Department*, as *prescribed*, or, at the option of the applicant,
- (b) the *Department* through the registrars office or a designated official of an institution of learning where the *foreigner* intends to study, provided that such institution— 10
 - (i) has been approved by and is in good standing with the *Department*;
 - (ii) certifies that it has received guarantees to its satisfaction that such *foreigner's* tuition fees will be paid;
 - (iii) has received the *prescribed* guarantees that such *foreigner* will have sufficient means to support himself or herself while in the *Republic*; 15
 - (iv) in the case of a minor, provides the name of a person present in South Africa who is, or has accepted to act, as such minor's guardian while in the *Republic*;
 - (v) undertakes to provide a *prescribed* periodic certification that such *foreigner* is satisfactorily performing his or her curriculum of study; and 20
 - (vi) undertakes to notify the *Department* when such *foreigner* has completed his or her studies, or is no longer performing them satisfactorily.

(2) 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 publicly funded or subsidised. 25

(3) A study permit does not entitle the holder to conduct *work*, provided that—

- (a) a study permit holder may undertake part-time *work* for a period not exceeding the *prescribed* period, if the permit holder is attending a higher education institution;
- (b) the *work* referred to in paragraph (a) may include temporary or full time *work* during the academic vacation periods. 30
- (c) the *Department* may, in appropriate cases, authorise the holder of a study permit to conduct *work* as practical training in a field related to that of his or her studies.

Treaty permit

14. (1) A treaty permit may be issued to a *foreigner* conducting activities in the *Republic* in terms of an international agreement to which the *Republic* is a party.

(2) The treaty permit may be issued by—

- (a) the *Department*; as *prescribed*, or
- (b) the *Department* of Foreign Affairs or the other *organ of State* responsible for the implementation of the treaty concerned under a delegation from the *Department*, provided that— 40
 - (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*; 45
 - (ii) the *organ of State* concerned satisfies the *Department* that, under the circumstances, it has the capacity to perform this function; and
 - (iii) the requirements, procedures and forms for the issuance of such permit are *prescribed*.

Business permit

15. (1) A business permit may be issued by the *Department* to a *foreigner* intending to establish, or invest in, a business in the *Republic* in which he or she may be employed, and to the members of such *foreigner's immediate family* provided that—

- (a) such *foreigner* invests the *prescribed* financial or capital contribution in such business; 55
- (b) the contribution referred to in paragraph (a) be part of the intended book value of such business;

- (c) a *chartered accountant* certifies compliance with the provisions of *this Act*, and
- (d) such *foreigner* has undertaken to comply with any relevant registration requirement set out in any law administered by the South African Revenue Service.

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(2) The holder of a business permit may conduct *work*.

(3) The *Department* may reduce or waive the capitalization 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 within 24 months of the issuance of the permit, and within every two years thereafter.

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

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Crew permit

16. (1) A crew permit may be issued to a *foreigner* who is a member of the crew of a *ship* by—

- (a) the *Department*; as *prescribed*, or
- (b) the *Department* through the *owner* of the *ship* carrying such member of the crew, provided that such *owner*—
 - (i) is in good standing with the *Department*;
 - (ii) has provided the *prescribed* financial guarantees to the *Department* to ensure compliance of such *foreigner* with the provisions of *this Act* and of his or her permit; and
 - (iii) accepts to be responsible for a *prescribed* fine, should the *foreigner* fail to honour the terms of such permit.

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(2) A crew permit may be issued on condition that the holder agrees to refrain from moving beyond a predetermined area.

(3) The holder of a crew permit may not conduct *work*.

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Medical treatment permit

17. (1) A medical treatment permit may be issued to a *foreigner* intending to receive medical treatment in the *Republic* for longer than three months by—

- (a) the *Department*, as *prescribed*, or
- (b) the *Department* through the registrars office or a designated official of an institution where the *foreigner* intends to receive treatment, provided that such institution—
 - (i) has been approved by and is in good standing with the *Department*;
 - (ii) certifies that it has received guarantees to its satisfaction that such *foreigner's* treatment costs will be paid;
 - (iii) in the case of a minor, provides the name of a person present in South Africa who is, or has accepted to act, as such minor's guardian while in the *Republic* or certifies that such minor will be accompanied by a parent or guardian to the *Republic*;
 - (iv) undertakes to provide a *prescribed* periodic certification that such *foreigner* is under treatment; and
 - (v) undertakes to notify the *Department* when such *foreigner* has completed his or her treatment.

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

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(3) A medical treatment permit does not entitle the holder to conduct *work*.

Relative's permit

18. (1) A relative's permit may be issued by the *Department* to a *foreigner* who is a member of the *immediate family* of a *citizen* or a *resident*, provided that such *citizen* or *resident* provides the *prescribed* financial assurance,

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- (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*.
- (2) The holder of a relative's permit may not conduct *work*. 5

Work permit

19. (1) A quota *work* permit may be issued by the *Department* as *prescribed* to a *foreigner* if the *foreigner* falls within a category 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 does not exceed the quota determined in the notice. 10

(2) A general *work* permit may be issued by the *Department* to a *foreigner* not falling within a category contemplated in subsection (1) if the prospective *employer*—

- (a) satisfies the *Department* in the manner *prescribed* that despite diligent search he or she has been unable to employ a person in the *Republic* with qualifications equivalent to those of the applicant; 15
- (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— 20
 - (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; 25
- (c) has committed to notify the *Department* 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*. 30

(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 to the *Department* 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. 35

(4) Subject to any *prescribed* requirements, an exceptional skills *work* permit may be issued by the *Department* to an individual of exceptional skills or qualifications and to those members of his or her *immediate family* determined by the *Department* under the circumstances or by regulation. 40

(5) An intra-company transfer *work* permit may be issued by the *Department* 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— 45

- (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) 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* if it has reason to believe otherwise; and
- (c) 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*. 50 55

(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 set out in his or her permit.

Retired person permit

20. (1) A retired person permit may be issued for a period exceeding three months to a *foreigner* who intends to retire in the *Republic*, provided that the *foreigner* provides proof that such *foreigner* has—

- (a) 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 from the country of his or her origin; or 5
- (b) a minimum *prescribed* net worth.

(2) The *Department* may authorise the holder of a retired person permit to conduct work under terms and conditions as the *Department* may deem fit to determine under the circumstances. 10

(3) A retired person permit may—

- (a) allow its holder to sojourn in the *Republic* on a seasonal or continuous basis; and
- (b) not exceed a four-year period, at the expiry of which it may be renewed one or more times, subject to subsection (1). 15

Corporate permit

21. (1) A corporate permit may be issued by the *Department* 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* shall determine the maximum number of *foreigners* to be employed in terms of a corporate permit by a *corporate applicant*, after having considered— 20

- (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; 25
- (b) 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 comply with the provisions of *this Act* and the corporate permit; and
 - (ii) immediately notify the *Department* if it has reason to believe that such *foreigner* is no longer in compliance with subparagraph (i) above;
- (c) 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 35
- (d) corroborated representations made by the *corporate applicant* in respect of the need to employ *foreigners*, their job descriptions, the number of *citizens* or *residents* employed and their positions, and other *prescribed* matters. 40

(3) The *Department* may withdraw or modify the corporate permit for good and reasonable cause.

(4) In consultation with the *Minister* of Trade and Industry or Minerals and Energy or Agriculture, as the case may be, the *Minister* of Labour may designate certain industries, or segments thereof, in respect of which the Government may— 45

- (a) reduce or waive the requirements of subsection (2) (d); 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 50
 - (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 55
- (d) waive or reduce the requirement of subsection (2)(c) under special conditions.

(5) The holder of a corporate permit may also employ *foreigners* in terms of section 19.

Exchange permit

22. An exchange permit may be issued by the *Department* to a *foreigner*—
- (a) participating in a programme of cultural, economic or social exchange, organised or administered by an *organ of State*, or a public higher education institution, in conjunction with an organ of a *foreign state*, provided that— 5
 - (i) after consultation with the *Board*, the *Minister* may delegate the authority to issue such permits to such *organ of State* if such *organ of State* has satisfied the *Minister* that it can ensure the compliance of such *foreigner* with *this Act* and report to the *Department* on the stages and the completion of the relevant programme together with other *prescribed* information; 10
 - (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 15
 - (b) who is under 25 years of age and has received an offer to conduct *work* for no longer than one year, provided that—
 - (i) the prospective *employer* certifies that the position exists, and has committed him or herself to— 20
 - (aa) pay such *foreigner* remuneration which complies with applicable legal requirements;
 - (bb) provide for the welfare and the needs of such *foreigner* while in the *Republic* under the aforesaid permit; and
 - (cc) report to the *Department* the failure of the *foreigner* to comply with the terms of his or her permit or to *depart* when so required; 25
 - (ii) such *foreigner* may not conduct *work* other than *work* for which the permit is issued; and
 - (iii) such *foreigner* may not qualify for a temporary or permanent residence permit until he or she has spent two years outside the *Republic*, which requirement may be waived by the *Department* in extraordinary circumstances. 30

Asylum

23. The *Department* may issue an asylum permit to an asylum seeker subject to the Refugees Act, 1998 (Act No. 130 of 1998), on any *prescribed* terms and conditions. 35

Cross-border and transit passes

24. (1) The *Department* may issue a cross-border pass with the same effect as a multiple *admission* visitor's permit to a *foreigner* who is a *citizen* 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*. 40
- (2) The *Department* may issue a transit *visa* authorising a *foreigner* travelling to a *foreign country* to make use of the transit facilities at a *port of entry*.

PERMANENT RESIDENCE

Permanent residence 45

25. (1) The holder of a permanent residence permit has all the rights, privileges, duties and obligations of a *citizen*, save for those rights, privileges, duties and obligations which a law or the Constitution explicitly ascribes to *citizenship*.

(2) Subject to *this Act*, upon *application*, one of the permanent residence permits set out in sections 26 and 27 may be issued to a *foreigner*. 50

(3) A permanent residence permit is to be issued on condition that the holder is not a *prohibited person*, and subject to section 28 of *this Act*.

(4) For good cause, as *prescribed*, the *Department* may attach reasonable individual terms and conditions to a permanent residence permit.

Direct residence

26. Subject to section 25, the *Department* shall 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 received an offer for permanent employment, provided that—
 - (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
 - (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;
- (b) is the *spouse* of a *citizen* or *resident*, provided that—
 - (i) the *Department* is satisfied that a good faith spousal relationship exists; and
 - (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;
- (c) is a child of a *citizen* or *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*.

Residence on other grounds

27. The *Department* may issue a permanent residence permit to a *foreigner* of good and sound character who—

- (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* that the position exists and that the position and related job description was advertised in the *prescribed* form and no suitably qualified *citizen* or *resident* was available to fill it;
 - (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;
 - (iii) 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
 - (iv) the permit may be extended to such *foreigner's spouse* and children younger than 21 years of age;
- (b) taking into account any *prescribed* requirement, has demonstrated to the satisfaction of the *Department* extraordinary skills or qualifications, and to those members of such *foreigner's immediate family* determined by the *Department* under the circumstances or by regulation;
- (c) intends to establish a business in the *Republic* investing in it 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—
 - (i) the *Department* 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
 - (ii) the permit shall lapse if the holder fails to renew such certification within two years of the issuance of the permit, and three years thereafter;
- (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*—

- (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; and/or
- (ii) has a minimum *prescribed* net worth;
- (f) has provided a certification by a *chartered accountant* that he or she has a *prescribed* minimum net worth and has paid a *prescribed* amount to the *Department*; or
- (g) is the relative of a *citizen* or *resident* within the first step of kinship.

Withdrawal of permanent residence

28. The *Department* may withdraw a permanent residence permit if its holder— 10
- (a) within four years of the issuance of such permit, has been convicted of any of the offences listed in Schedule 1;
 - (b) has been convicted three times of any of the offences listed in Schedules 1 and 2;
 - (c) has been absent from the *Republic* for more than three years, provided that— 15
 - (i) upon showing good cause and upon prior *application* the *Department* may extend this period in specific cases;
 - (ii) the time when such holder—
 - (aa) was residing abroad while in the service of the State;
 - (bb) was residing abroad while a representative or employee of a person 20 or association of persons *resident* or established in the *Republic*;
 - (cc) was residing abroad while in the service of an international organisation of which the State is a member;
 - (dd) in the case of the *spouse* or dependent child of a person referred to in subitem (aa), (bb) or (cc), such *spouse* or child was residing with 25 such person; or
 - (ee) in the case of the *spouse* or dependent child of a person who is a South African *citizen*, such *spouse* or child was residing with such person,
 - shall not be computed within such period; 30
 - (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*;
 - (iv) the period of absence may only be interrupted by an *admission* and sojourn in the *Republic*; and 35
 - (v) the requirement of residence in the *Republic* shall not affect any *foreigner* to whom exemption has been granted under section 31(2)(b) as a member of a category of persons, unless such *foreigner* previously entered the *Republic* or sojourned therein for the purpose of permanent residence under the authority of such exemption; or 40
 - (d) has not taken up residence in the *Republic* within one year of the issuance of such permit.

EXCLUSIONS AND EXEMPTIONS

Prohibited persons

29. (1) The following *foreigners* do not qualify for a temporary or a permanent 45 residence permit:
- (a) those infected with infectious diseases as *prescribed* from time to time;
 - (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, 50 drug trafficking, money laundering or kidnapping;
 - (c) anyone previously deported and not rehabilitated by the *Department* 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 55
 - (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.

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

Undesirable persons

30. (1) The following *foreigners* may be declared undesirable by the *Department* as prescribed: 5

- (a) 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; 10
- (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 15 certain *prescribed* offences.

(2) Upon *application* from the affected person, the *Department* may waive any of the grounds of undesirability provided that it reports such decisions to the *Minister* and the *Board*, with reasons.

Exemptions 20

31. (1) The following persons or categories of persons are not *illegal foreigners*:

- (a) a member of a military force of a *foreign state* which has been granted consent by the Government of the *Republic* to enter the *Republic*, while such consent subsists; and
- (b) the officers and crew of an official *ship* of a *foreign state*, while such *ship* is in 25 port.

(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—

- (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 30 admitted 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;
- (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 35 justify such a decision; provided that the *Minister* may—
 - (i) exclude one or more identified *foreigners* from such categories; and
 - (ii) for good cause, withdraw such right from a *foreigner* or a category of *foreigners*;
- (c) authorise any person or category of persons to enter the *Republic* at a place 40 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
- (d) for good cause, waive any *prescribed* requirement or form, 45 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.

ENFORCEMENT AND MONITORING

Illegal foreigners 50

32. (1) Any *illegal foreigner* shall depart, unless authorised by the *Department* to remain in the *Republic* pending his or her *application* for a *status*.

(2) Any *illegal foreigner* shall be deported.

Inspectorate

33. (1) An inspectorate shall be established through *regulations* and shall consist of such persons, including immigration officers, as may be determined by the *Minister*.

(2) On the recommendation of the *Director-General*, the *Minister* shall appoint the head of the inspectorate.

(3) The inspectorate shall investigate any matter falling within the scope of *this Act*, subject to the directions of the *Minister*, and shall in the performance of its functions follow such procedure as may be *prescribed*.

(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*;
- (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* is relevant to the investigation to produce such thing, and the *Department* may inspect and retain any thing so produced for a reasonable time; and
- (c) by notice in writing call upon any person to appear before the *Department* and to give evidence or to answer questions relevant to the subject matter of the investigation,

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 is to be produced or the evidence is to be given.

(5) In the pursuance of *this Act*, an immigration officer may obtain a warrant to—

- (a) enter or search any *premises* for a person or thing or to make inquiries, including the power to—
 - (i) examine any thing found in or upon such *premises*;
 - (ii) request from the person who is in control of such *premises* or in whose possession or under whose control any thing is when it is found, or who is upon reasonable grounds believed to have information with regard to such thing, an explanation or information; and
 - (iii) make copies of or extracts from any such thing found upon or in such *premises*;
- (b) apprehend an *illegal foreigner*, subject to section 34(1); or
- (c) after having issued a receipt in respect thereof, seize and remove documentation or any other thing which—
 - (i) is concerned with or is upon reasonable grounds suspected of being concerned with any matter which is the subject of any investigation in terms of *this Act*; or
 - (ii) contains, or is on reasonable grounds suspected to contain, information with regard to any such matter,

provided that—

- (aa) any thing so seized shall be returned in good order as soon as possible after the purpose of its seizure has been accomplished; and
- (bb) a person from whom a book or document has been taken shall be allowed reasonable access, including the right to make copies at his or her expense.

(6) A warrant referred to in subsection (5) shall be issued by a magistrate of a *Court* which has jurisdiction in the area where the *premises* in question are situated, and only if it appears to the magistrate from information on oath that there are reasonable grounds for believing that a thing mentioned in subsection (5) is upon or in such *premises*, and shall specify which of the acts mentioned in subsection (5) may be performed thereunder by the person to whom it is issued.

(7) A warrant issued in terms of this section shall be executed by day unless the magistrate who issues the warrant authorises its execution by night at times which shall be reasonable, and any entry upon or search of any *premises* in terms of this section shall be conducted with strict regard to decency and order, including—

- (a) a person's right to, respect for, and the protection of, his or her dignity;
- (b) the right of a person to freedom and security; and
- (c) the right of a person to his or her personal privacy.

(8) A person executing a warrant in terms of this section shall immediately before commencing with the execution—

- (a) identify himself or herself to the person in control of the *premises*, if such person is present, and hand to such person a copy of the warrant or, if such person is not present, affix such copy to a prominent place on the *premises*; and
 - (b) supply such person at his or her request with particulars regarding his or her authority to execute such a warrant. 5
- (9) (a) An immigration officer may, without a warrant, enter upon any *premises*, other than a private dwelling, and exercise the powers referred to in subsection (5)(a) and (c)—
- (i) if the person who is competent to do so consents to such entry, search, seizure and removal; or 10
 - (ii) if he or she upon reasonable grounds believes that—
 - (aa) the required warrant will be issued to him or her in terms of subsection (5) if he or she were to apply for such warrant; and
 - (bb) the delay caused by the obtaining of any such warrant would defeat the object of the entry, search, seizure and removal. 15
- (b) Any entry and search in terms of paragraph (a) shall be executed by day, unless the execution thereof by night is justifiable and necessary.
- (10) (a) Any person who may on the authority of a warrant issued in terms of subsection (5), or under the provisions of subsection (9), enter upon and search any *premises*, may use such force as may be reasonably necessary to overcome resistance to such entry or search; and 20
- (b) No person may enter upon or search any *premises* unless he or she has audibly demanded access to the *premises* and has notified the purpose of his or her entry, unless such person is upon reasonable grounds of the opinion that any thing may be destroyed or a person put at risk of bodily harm if such access is first demanded and such purpose is first notified. 25
- (11) If, during the execution of a warrant or the conducting of a search in terms of this section, a person claims that a thing found on or in the *premises* concerned contains privileged information and refuses its inspection or removal, the person executing the warrant or conducting the search shall, if he or she is of the opinion that the thing contains information which is relevant to the investigation and that such information is necessary for the investigation, request a person designated by a *Court* which has jurisdiction to seize and remove that thing for safe custody until a *Court* has made a ruling on the question whether the information concerned is privileged or not. 30
- (12) A warrant issued in terms of this section may be issued on any day and shall be in force until— 35
- (a) it is executed;
 - (b) it is cancelled by the person who issued it or, if such person is not available, by a person with similar authority; 40
 - (c) the expiry of one month from the day of its issue; or
 - (d) the purpose for the issuing of the warrant has lapsed,
- whichever may occur first.
- (13) In consultation with the *Minister* and through diplomatic channels, the *Department* may obtain permission from the relevant authority of a *foreign country* to receive evidence or gather information in or from that country. 45
- (14) When exercising powers under this section, an immigration officer shall clearly identify him or herself as such by means of adequate identification.

Deportation and detention of illegal foreigners

- 34.** (1) Without 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 place under the control or administration of the *Department* determined by the *Director-General*, provided that the *foreigner* concerned— 50
- (a) shall be notified in writing of the decision to *deport* him or her and of his or her right to appeal such decision in terms of *this Act*; 55
 - (b) may at any time request any officer attending to him or her that his or her detention for purpose of *deportation* be confirmed by warrant of a *Court*, which, if not issued within 48 hours of such request, shall cause the immediate release of such *foreigner*; 60

- (c) shall be informed upon arrest or immediately thereafter of the rights set out in the preceding two paragraphs, when possible, practicable and available in a language that he or she understands;
 - (d) may not be held in detention for longer than 30 calendar days without a warrant of a *Court* which on good and reasonable grounds may extend such detention for an adequate period not exceeding 90 calendar days, and 5
 - (e) shall be held in detention in compliance with minimum *prescribed* standards protecting his or her dignity and relevant human rights.
- (2) The detention of a person in terms of *this Act* elsewhere than on a *ship* and for purposes other than his or her *deportation* shall not exceed 48 hours from his or her arrest or the time at which such person was taken into custody for examination or other purposes, provided that if such period expires on a non-court day it shall be extended to four p.m. of the first following court day. 10
- (3) The *Department* may order a *foreigner* subject to *deportation* to deposit a sum sufficient to cover in whole or in part the expenses related to his or her *deportation*, detention, maintenance and custody and an officer may in the *prescribed* manner enforce payment of such deposit. 15
- (4) Any person who fails to comply with an order made in terms of subsection 3 shall be guilty of an offence and liable on conviction to a fine not exceeding R20 000 or to imprisonment not exceeding 12 months. 20
- (5) Any person other than a *citizen* or a *resident* who having been—
- (a) removed from the *Republic* or while being subject to an order issued under a law to leave the *Republic*, returns thereto without lawful authority or fails to comply with such order; or
 - (b) refused *admission*, whether before or after the commencement of *this Act*, has entered the *Republic*, 25
- shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding 12 months and may, if not already in detention, be arrested without warrant and deported under a warrant issued by a *Court* and, pending his or her removal, be detained in the manner and at the place determined by the *Director-General*. 30
- (6) Any *illegal foreigner* convicted and sentenced under *this Act* may be deported before the expiration of his or her sentence and his or her imprisonment shall terminate at that time.
- (7) On the basis of a warrant for the removal or release of a detained *illegal foreigner*, the person in charge of the prison concerned shall deliver such *foreigner* to that immigration officer or police officer bearing such warrant, and if such *foreigner* is not released he or she shall be deemed to be in lawful custody while in the custody of the immigration officer or police officer bearing such warrant. 35
- (8) A person at a *port of entry* who has been notified by an immigration officer that he or she is an *illegal foreigner* or in respect of whom the immigration officer has made a declaration to the *master* of the *ship* on which such *foreigner* arrived that such person is an *illegal foreigner* shall be detained by the *master* on such *ship* and, unless such *master* is informed by an immigration officer that such person has been found not to be an *illegal foreigner*, such *master* shall remove such person from the *Republic*, provided that an immigration officer may cause such person to be detained elsewhere than on such *ship*, or be removed in custody from such *ship* and detain him or her or cause him or her to be detained in the manner and at a place determined by the *Director-General*. 40
- (9) The person referred to in the preceding subsection shall, pending removal and while detained as contemplated in that subsection, be deemed to be in the custody of the *master* of such *ship* and not of the immigration officer or the *Department*, and such *master* shall be liable to pay the costs of the detention and maintenance of such person while so detained if the *master* knew or should reasonably have known that such person was an *illegal foreigner*, provided that— 45
- (a) if such *master* fails to comply with the provisions of that subsection, or if required to pay such costs, such *master* or the *owner* of such *ship* shall forfeit in respect of every person concerned a sum fixed by the immigration officer, not exceeding an amount *prescribed* from time to time; 55
 - (b) the immigration officer may, before such person is removed from such *ship*, require the *master* or the *owner* of such *ship* to deposit a sum sufficient to cover any expenses that may be incurred by the *Department* in connection with the *deportation*, detention, maintenance and custody of such person, if there are grounds to believe that the *master* knew or should reasonably have known that such person was an *illegal foreigner*; 60

- (c) if such person is not removed from the *Republic* on the *ship* on which he or she was conveyed to the *Republic*, except by reason of not being an *illegal foreigner*, and if the *master* knew or should have known that such person was an *illegal foreigner*, the *owner* of that *ship* shall at the request of an immigration officer convey that person, or have him or her conveyed, free of charge to the State to a place outside the *Republic*, and any person, other than an immigration officer, charged by the *Department* with the duty of escorting that person to such place, shall be deemed to be an immigration officer while performing such duty; and 5
 - (d) if the *owner* of such *ship* fails to comply with the provisions of this section, he or she shall forfeit in respect of each such person a sum fixed by the immigration officer, not exceeding an amount *prescribed* from time to time. 10
- (10) A person who escapes or attempts to escape from detention imposed under *this Act* shall be guilty of an offence and may be arrested without a warrant.

Ships

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

(2) An immigration officer or other authorised person employed by the *Department* may—

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- (a) board any *ship* which is entering or has entered into any port and for good cause prohibit or regulate disembarkation from, or the offloading of, such *ship* in order to ascertain the *status* or *citizenship* of its passengers; and
- (b) request the person in control of a *port of entry* or any person acting under his or her authority to order the *master* to moor or anchor his or her *ship* in such port at such distance from the shore or landing place or in such position as he or she may direct. 25

(3) The *master* of a *ship* entering a *port of entry* upon demand shall deliver to an immigration officer—

- (a) a list stating— 30
 - (i) the names of all passengers on board the *ship*, classified according to their respective destinations; and
 - (ii) such other details *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*; and 35
- (d) a return, under the hand of the medical officer of that *ship* or, if there is no such medical officer, under the hand of the *master* himself or herself, stating—
 - (i) any cases of disease, whether infectious or otherwise, which have occurred or are suspected to have occurred upon the voyage; 40
 - (ii) the names of the persons who have suffered or are suffering from such disease;
 - (iii) details of any birth or death which occurred upon the voyage between such port and a previous port; and
 - (iv) any other *prescribed* matter or event, 45

provided that such immigration officer may—

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

(4) If a *ship* 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* leaves such port and has not been admitted, the *master* or the *owner* of that *ship* 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* to muster the crew of such *ship* on the arrival of such *ship* in any *port of entry* and again before it leaves such port.

(6) The competent officer of customs at any harbour may refuse to give to the *master* of any *ship* clearance papers to leave that harbour unless he or she has complied with the provisions of *this Act* and produced a certificate of an immigration officer to that effect. 60

(7) A *master* shall ensure that any *foreigner* conveyed to a *port of entry* for purposes of travelling to a *foreign country* holds a transit *visa*, if required.

Monitoring entries in *Republic* and exits

36. (1) The *Department* shall control the entry and exit of people through the *borders* of the *Republic* in order to ensure compliance with *this Act*, and may do so with the assistance of other organs of State. 5

(2) The *Department* may receive a delegation from the South African Revenue Service or the Commissioner therefor, the *Department* of Safety and Security, the *Department* of Defence or the *Department* of Finance enabling and mandating it to exercise powers and perform functions exercised or performed under any law by any of such *Departments* relating to the control of movement of people or goods across the *borders*, including ports of entry. 10

(3) By proclamation, the *President* may order that certain assets and human resources of the *Department* allocated to the control of entry and exit be placed under the control of the *Minister* of Defence to be deployed as determined by the *President* in terms of section 201 of the Constitution. 15

IMMIGRATION COURTS

Immigration Courts

37. (1) Every magistrates' court is an Immigration *Court* for the purposes of *this Act* and shall have jurisdiction on any matter arising from the *application* of *this Act*, 20 including, but not limited to—

- (a) the review of decisions of the *Department*;
- (b) any legal proceedings against the *Department*; and
- (c) any matter concerning *status*.

(2) Any legal proceedings arising from the *application* of *this Act* shall be dealt with as soon as is reasonably possible and the *Courts* must ensure that such proceedings are finalised without any unavoidable delay. 25

The Rules *Board* for *Courts* of Law established in terms of the Rules *Board* of *Courts* of Law Act, 1985 (Act No. 107 of 1985), shall as soon as reasonably possible after the commencement of *this Act* make rules aimed at facilitating the adjudication of any matter arising from *this Act* in a simplified and expeditious manner. 30

DUTIES AND OBLIGATIONS

Employment

38. (1) No person shall employ— 35

- (a) an *illegal foreigner*;
- (b) a *foreigner* whose *status* does not authorise him or her to be employed by such person; or
- (c) a *foreigner* on terms, conditions or in a capacity different to those contemplated in such *foreigner's status*.

(2) An *employer* shall make a good faith effort to ascertain that no *illegal foreigner* is employed by him or her or to ascertain the *status* or *citizenship* of those whom he or she employs. 40

(3) If it is proven, other than by means of the presumption referred to in subsection (5), that a person was employed in violation of subsection (1), it shall be presumed that the *employer* knew at the time of the employment that such person was among those referred to in subsection (1), unless such *employer* proves that he or she— 45

- (a) employed such person in good faith; and
- (b) complied with subsection (2), provided that a stricter compliance shall be required of any *employer* who employs more than five employees or has been found guilty of a prior offence under *this Act* related to this section. 50

(4) An *employer* employing a *foreigner* shall—

- (a) for two years after the termination of such *foreigner's* employment, keep the *prescribed* records relating thereto; and
- (b) report to the *Department*— 55
 - (i) the termination of such *foreigner's* employment; and

(ii) any breach on the side of the *foreigner* of his or her *status*.

(5) If an *illegal foreigner* is found on any *premises* where a business is conducted, it shall be presumed that such *foreigner* was employed by the person who has control over such *premises*, unless prima facie evidence to the contrary is adduced.

Learning institutions

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39. (1) No learning institution shall knowingly provide training or instruction to—

- (a) an *illegal foreigner*;
- (b) a *foreigner* whose *status* does not authorise him or her to receive such training or instruction by such person; or
- (c) a *foreigner* on terms or conditions or in a capacity different from those contemplated in such *foreigner's status*.

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(2) If an *illegal foreigner* is found on any *premises* where instruction or training is provided, it shall be presumed that such *foreigner* was receiving instruction or training from, or allowed to receive instruction or training by, the person who has control over such *premises*, unless prima facie evidence to the contrary is adduced.

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Accommodation

40. (1) Any business offering overnight accommodation shall make a good faith effort to identify its customers as *citizens* or *status* holders and shall report in the *prescribed* form to the *Department* any failure to effect such identification.

(2) When subsection (1) is not complied with and an *illegal foreigner* is found on any *premises* referred to in that subsection, it shall be presumed that such *illegal foreigner* was harboured by the person who has control over such *premises*, unless prima facie evidence to the contrary is adduced.

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Identification

41. When so requested by an immigration officer or a police officer any person shall identify himself or herself as a *citizen*, *resident* or *foreigner* when so requested by an immigration officer or a police 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 immigration officer or a police officer may take such person into custody without a warrant and if necessary detain him or her in a *prescribed* manner and place until such person's prima facie *status* or *citizenship* is ascertained.

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Aiding and abetting *illegal foreigners*

42. (1) Subject to *this Act*, and save for necessary humanitarian assistance, no person, shall aid, abet, assist, enable or in any manner help—

- (a) an *illegal foreigner*; or
- (b) a *foreigner* in respect of any matter, conduct or transaction which violates such *foreigner's status*, when applicable,

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including but not limited to—

- (i) providing instruction or training to him or her, or allowing him or her to receive instruction or training;
- (ii) issuing to him or her a licence or other authorisation to conduct any business or to carry on any profession or occupation;
- (iii) entering into an agreement with him or her for the conduct of any business or the carrying on of any profession or occupation;
- (iv) conducting any business or carrying on any profession or occupation in cooperation with him or her;
- (v) assisting, enabling or in any manner helping him or her to conduct any business or carry on any profession or occupation;
- (vi) obtaining a licence or other authority for him or her or on his or her behalf to conduct any business or to carry on any profession or occupation;
- (vii) doing anything for him or her or on his or her behalf in connection with his or her business or profession or occupation;
- (viii) harbouring him or her, which includes providing accommodation; or
- (ix) letting or selling or in any manner making available any immoveable property in the *Republic* to him or her.

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(2) In any criminal proceedings arising out of this section, it is no defence to aver that the *status* of the *foreigner* concerned, or whether he or she was an *illegal foreigner*, was unknown to the accused if it is proved that the accused ought reasonably to have known the *status* of the *foreigner*, or whether he or she was an *illegal foreigner*.

Obligation of *foreigners*

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43. A *foreigner* shall—

- (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* upon its issuance, extension or renewal; and
- (b) depart upon expiry of his or her *status*.

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Organs of State

44. When possible, any *organ of State* shall endeavour to ascertain the *status* or *citizenship* of the persons receiving its services and shall report to the *Department* 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.

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Other institutions

45. Prescribed institutions or persons other than organs of State may 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* 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.

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MISCELLANEOUS

Immigration practitioners

46. (1) No one, other than an attorney, advocate or immigration practitioner, may conduct the trade of representing another person in the proceedings or procedures flowing from *this Act*.

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(2) In order to be registered on a roll of immigration practitioners to be maintained by the *Department*, an immigration practitioner shall apply in the *prescribed* manner, producing evidence of the *prescribed* qualifications and paying any *prescribed* registration fee.

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(3) After affording him or her a fair opportunity to be heard, the *Department* may withdraw the registration of an immigration practitioner who has contravened *this Act* or any *prescribed* duty.

Internal monitoring and controls

47. (1) The *Department* shall set up an internal anti- corruption unit charged with the task of preventing, deterring, detecting and exposing any instance of corruption, abuse of power, xenophobia and dereliction of duty by a person employed in the *Department*, provided that such unit shall—

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- (a) not oust the jurisdiction or the investigative authority of any other *organ of State*; and
- (b) comprise specialized members seconded from time to time and on a rotating basis by the National Commissioner of the South African Police Service.

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(2) The *Director-General* shall report to the *Minister* and inform the *Board* annually on—

- (a) measures and proposals aimed at increasing the efficacy, efficiency and cost-effectiveness of the *Department*; and

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(b) statistical data relating to the implementation of *this Act* and the *Department*.

(3) The *Board* shall utilise the information referred to in subsection (2) in its annual report to Parliament.

Foreigners erroneously allowed to enter *Republic*

48. No *illegal foreigner* shall be exempt from a provision of *this Act* or be allowed to sojourn in the *Republic* on the grounds that he or she was not informed that he or she could not enter or sojourn in the *Republic* or that he or she was admitted or allowed to remain in the *Republic* through error or misrepresentation, or because his or her being an *illegal foreigner* was undiscovered.

OFFENCES

Offences

49. (1) (a) Anyone who enters or remains in 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, shall be guilty of an offence and liable on conviction to a fine or to imprisonment not exceeding nine months.

(2) Anyone who knowingly assists a person to enter 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.

(3) Anyone who knowingly employs an illegal foreigner or a foreigner in violation of this Act shall be guilty of an offence and liable on conviction to a fine or to imprisonment not exceeding one year, provided that such person's second conviction of such an offence shall be punishable by imprisonment not exceeding two years or a fine, and the third or subsequent convictions of such offences by imprisonment not exceeding three years without the option of a fine.

(4) Anyone who intentionally facilitates an illegal foreigner to receive public services to which such illegal foreigner is not entitled shall be guilty of an offence and liable on conviction to a fine.

(5) Any civil servant who provides false or intentionally inaccurate or unauthorised documentation or benefit to an illegal foreigner, or otherwise facilitates such illegal foreigner to disguise his or her identity or status, or accepts any undue financial or other consideration to perform an act or to exercise his or her discretion in terms of this Act, shall be guilty of an offence and liable on conviction to a fine or to imprisonment not exceeding two years, provided that if such civil servant is employed by the Department such offence shall be punishable by imprisonment not exceeding three years without the option of a fine.

(6) Anyone failing to comply with one of the duties or obligations set out under sections 42 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 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.

(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.

(9) Anyone, other than a civil servant, who produces 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.

(10) Anyone who through offers of financial or other consideration or threats, compels or induces an officer to contravene this Act or to breach such officer's duties shall be guilty of an offence and liable on conviction—

(a) to a fine or to imprisonment not exceeding 18 months; or

- (b) if subsequently such officer in fact contravenes this Act or breaches his or her duties, to a fine or to imprisonment not exceeding three years.

(11) Anyone guilty of the offence contemplated in section 37(10) shall be liable on conviction to a fine or to imprisonment not exceeding six months.

(12) A Court may make an order as to costs in favour of the Department to the extent necessary to defray the costs referred to in section 37(3) against— 5

- (a) any illegal foreigner referred to in subsection 37(3);
- (b) any person who contravened section 45;
- (c) any person who conveyed into the Republic a foreigner without the required transit visa; or 10
- (d) any person who committed an offence contemplated in subsections (5), (7), (8) or (10),

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

Administrative offences

50. (1) Any *foreigner* who leaves the *Republic* after the expiry of his or her permit shall be liable to an administrative fine of a *prescribed* amount not exceeding R3000, which fine shall be imposed by the *Department* on detection of the overstay and exacted when such *foreigner* is admitted or makes an *application* with the *Department*. 15

(2) Anyone who through negligence produces an incorrect certification contemplated by *this Act* shall be liable to an administrative fine of a *prescribed* amount not exceeding R8000, which fine shall be imposed by the *Department*. 20

(3) Any *owner* or *master* of a *ship* who through negligence contravenes the provisions of section 35 shall be liable to an administrative fine of a *prescribed* amount not exceeding R10 000, which fine shall be imposed by the *Department*.

TRANSITIONAL PROVISIONS 25

Transitional definitions

51. In respect of sections 52 and 53 the following additional or different definitions shall apply, unless the context requires otherwise:

- (i) “prescribe” means to provide through *regulations* and “*prescribed*” has a correspondent meaning; 30
- (ii) “previous Act” means the Aliens Control Act, 1991 (Act No. 96 of 1991);
- (iii) “*published*” means *published* in the *Government Gazette*; and
- (iv) “*regulations*” means both general and specific rules adopted by the *Minister* and *published*.

Functions of *Department* and *Board* 35

52. (1) Until the *Board* is duly constituted and operational, any regulation required in terms of *this Act* shall be *prescribed*.

(2) Subject to *this Act*, any *regulations* adopted under the previous Act shall remain in force and effect until repealed or amended.

(3) The *Board* shall be convened within 90 days of the coming into force of *this Act*. 40

Existing Permits

53. (1) Any permanent residence permit validly issued in terms of the previous Act shall be deemed to have been issued in terms of, and in compliance with, *this Act*.

(2) Any permit issued in terms of the previous Act for a determined period shall continue in force and effect in accordance with the terms and conditions under which it was issued, but may only be renewed in terms of *this Act*, provided that— 45

- (i) the *Department* may waive the requirement to submit a new *application*, and
- (ii) for good cause the *Department* may authorise a permit to be renewed in terms of the previous Act.

(3) Any exemptions for an undetermined period granted in terms of section 28(2) of the previous Act shall be deemed a permanent residence permit for the purposes of *this Act*, and any exemption granted for a determined period shall continue in force and effect in accordance with the terms and conditions under which it was issued. 50

(4) Permits issued under section 41 of the previous Act shall continue in force and effect in accordance with the terms and conditions under which they were issued, but may not be renewed.

Repeal of laws

54. (1) The laws mentioned in Schedule 3 are hereby repealed or amended to the extent set out in its third column. 5

(2) Anything done under the provisions of a law repealed by subsection (1) and which could have been done under *this Act* shall be deemed to have been done under *this Act*.

Short title and commencement

55. (1) This Act shall be referred to as the Immigration Act, 2002, and shall come into force and effect on a date determined by the *President* by proclamation in the *Government Gazette*. 10

(2) The date of coming into force and effect of section 37 shall be determined in consultation with the *Minister* for Justice and Constitutional Development.

Schedule 1

Offences referred to in section 28(a) and (b) of *this Act*

Treason against the *Republic*
Murder
Rape, other than statutory rape
Indecent Assault
Robbery
Kidnapping
Assault when a dangerous wound is inflicted
Arson
Any conspiracy, incitement or attempt to commit an offence referred to in this
Schedule

Schedule 2**Offences referred to in section 28(b) of *this Act***

Corruption
Sedition
Public violence
Culpable Homicide
Bestiality
Malicious injury to property
Breaking and entering any *premises*
Theft
Receiving stolen property knowing it to have been stolen
Fraud
Forgery or uttering a forged document knowing it to have been forged
Offences relating to coinage
Any offence relating to the illicit possession, conveyance or supply of dependence-producing drugs
Any conspiracy, incitement or attempt to commit an offence referred to in this Schedule
Any offence the punishment of which may be a period of imprisonment exceeding six months without the option of a fine

Schedule 3

Laws repealed or amended

No and year of law	Short Title	Extent of the repeal or amendment
Act No. 96 of 1991	Aliens Control Act, 1991	The whole repealed
Act No. 75 of 1995	Aliens Control Amendment Act, 1995	The whole repealed
Act No. 88 of 1995	South African Citizenship Act, 1995	<p>1. Amendment of section 1 Section 1 of the South African Citizenship Act, 1995 (hereinafter referred to as “<i>the principal Act</i>”) is hereby amended by the addition of the following definition: - “<i>prescribed</i>”, as used in section 5 of this Act, has the meaning assigned thereto in the Immigration Act of 2002;”</p> <p>2. Amendment of section 26 The following subsection is hereby added to the end of section 26 of <i>the principal Act</i>: “(5) In case of an inconsistency between this Act and the Immigration Act of 2002, the latter shall prevail.”</p> <p>3. Implementation The amendments to <i>the principal Act</i> shall come into force and effect at a date <i>prescribed</i> by the Minister, provided that the Minister may determine different dates for different provisions thereof.</p>
Act No. 130 of 1998	Refugees Act, 1998	<p>1. Amendment of section 1 Section 1 of the Refugees Act, 1998 (hereinafter referred to as “<i>the principal Act</i>”), is hereby amended by— (a) the addition or substitution of the following definitions: - “<i>Board</i>” has the meaning assigned thereto in the Immigration Act of 2002 - “<i>Court</i>” has the meaning assigned thereto in the Immigration Act of 2002 - “<i>prescribed</i>” has the meaning assigned thereto in the Immigration Act of 2002;” (b) the deletion of the following definitions: - “Aliens Control Act”; - “Appeal Board”.</p>

No and year of law	Short Title	Extent of the repeal or amendment
		<p>2. Amendments to <i>principal Act</i> (1) <i>The principal Act</i> is hereby amended by substituting— (a) the word “<i>Minister</i>” with the words “<i>Minister, acting after consultation with the Board</i>”, where such word occurs in sections 7[1] and 10; (b) the word “<i>Minister</i>” with the word “<i>Department</i>” where such word occurs in sections 22 and 23; (2) <i>The principal Act</i> is hereby amended by deleting— (a) the words “and Appeal Board” and the word “both” where they occur in sections 15, 16, 19 and 20; and (b) the words “or Appeal Board” where they occur in sections 17 and 18. (3) <i>The principal Act</i> is hereby amended by deleting sections 12, 13 and 14 and by substituting section 26 with the following section: “Appeals 26. [(1) Any asylum seeker may lodge an appeal with the Appeal Board in the manner and within the period provided for in the rules if the Refugee Status Determination Officer has rejected the application in terms of section 24(3)(c). (2) The Appeal Board may after hearing an appeal confirm, set aside or substitute any decision taken by a Refugees Status Determination Officer in terms of section 24(3)(c). (3) Before reaching a decision, the Appeal Board may—] <u>An Asylum seeker may lodge an appeal with a Court in the manner and within the period provided for in the rules, and such Court shall hear and determine any relevant question of law or fact in terms of this Act provided that, before reaching a decision, such court may—</u></p>

No and year of law	Short Title	Extent of the repeal or amendment
		<p>(a) invite the UNHCR representative to make oral or written representations;</p> <p>(b) refer the matter back to the Standing Committee for further inquiry and investigation;</p> <p>(c) request the attendance of any person who, in its opinion, is in a position to provide the [Appeal Board] Court with relevant information;</p> <p>(d) of its own accord make further inquiry or investigation;</p> <p>(e) request the applicant to appear before it and to provide any such other information as it may deem necessary.</p> <p>[(4) The Appeal Board must allow legal representation upon the request of the applicant.]”</p> <p>3. Implementation</p> <p>The amendments to <i>the principal Act</i> shall come into force and effect at a date <i>prescribed</i> by the <i>Minister</i>, provided that the <i>Minister</i> may determine different dates for different provisions thereof ensuring that the relevant provisions come into force only after the <i>Courts</i> have been partially or fully established.</p>

MEMORANDUM

The Bill establishes a legislative framework for the issuance of temporary residence permits allowing foreigners to enter, sojourn and conduct certain activities, including but not limited to work activities, within the Republic. The Bill empowers the Department of Home Affairs to issue such permits and prevent, detect and deport illegal foreigners within the Republic, while performing functions relating to the prevention of xenophobia and education of communities. The Bill also provides for a human-rights based legal framework to deal with matters relating to foreigners within the Republic. Furthermore, the Bill provides for specialised border control.

The various Clauses of the Bill—

- contain the applicable definitions;
- set out the general conditions and criteria for the admission of foreigners into the Republic and the departure of any person from the Republic;
- provide for the general rules relating to the issuance of temporary residence permits;
- provide for the general entry permit applicable when other permits are not required;
- provide for several types of temporary residence permits depending on the activities that a foreigner intends to conduct in the Republic, the length of his or her stay and the grounds on which he or she qualifies for the right to sojourn and conduct activities within the Republic;
- cross-reference other statutory provisions in terms of which the Department administers asylum and refugee matters;
- provide for cross-border and transit passes to address the reality of people requiring to cross the borders on a routine basis or who are on transit to other countries.
- provide for the grounds and criteria applicable to the acquisition of permanent residence which are divided in two classes, one relating to the acquisition by right on the basis of grounds, such as having held a work permit for five years or being the spouse of a South African national, and the other relating to permanent residence which may be acquired under certain conditions and within certain limits;
- deal with foreigners who are either barred from entering the Republic or may be allowed into the Republic only under special conditions on account of their past conduct or present activities;
- provide for discretionary powers to address specific cases and circumstances;
- deal with the withdrawal of permanent residence;
- deal with objectives and structures of migration control which include the Minister, the Department and an Immigration Advisory Board, and set out their respective powers and functions as well as the objectives governing their exercise and performance. The structure of the Department in respect of migration control is set out on a regional basis. The Board is given advisory policy powers in respect of policy formulation and regulation making. The regulation-making process is provided for in a process requiring the necessary participation of the affected or interested parties, which is subject to judicial review on the grounds of reasonableness. Provision is also made for several stages of administrative review;
- deal with the enforcement and monitoring of the immigration laws setting out the parameters under which investigation of illegal foreigners may take place, together with the conditions of their deportation and detention. Provision is made for tasking the Department with the function of border control;
- establish Immigration Courts on the level of Magistrates Courts to deal with matters relating to the administration of immigration laws.
- set out obligations in respect of immigration matters on the side of certain individuals and institutions and provide for general duties applicable in respect of conduct violating the provisions of immigration laws;
- provide for the status and accreditation of agents representing foreigners before the Department;
- provides for the internal auditing of the Department to prevent corruption and improve efficiency and productivity;

- provide for measures in respect of foreigners erroneously allowed to enter the Republic;
- set out sanctions applicable to the violations of the provisions of the Bill and define the relevant offences;
- contain transitional provisions and the short title and commencement of the Bill.

FINANCIAL IMPLICATIONS FOR STATE

The implementation of the Immigration Bill will be staggered over 3 to 4 years. The relevant financial implications for the Department of Home Affairs for such period has been budgeted for as follows:

- 2002-2003: R7 million, of which R3.5 million recurring
- 2003-2004: R7 million, of which R3 million recurring
- 2005-2006: R7 million, of which R3 million recurring
- 2006-2007: R9 million recurring

PERSON AND BODIES CONSULTED

Department of Labour
 Department of Trade and Industry
 Department of Justice and Constitutional Development
 Department of Education
 Department of Defence
 Minister of Transport
 Minister of Finance for the purposes of the Public Finance Management Act
 Department of Finance
 Department of Safety and Security
 National Intelligence Agency
 Department of Housing
 South African Revenue Service
 Department of Foreign Affairs
 Minister of Minerals and Energy
 Minister of Health
 Department of Arts, Culture, Science and Technology
 Department of Agriculture and Land Affairs
 Department of Environmental Affairs and Tourism
 Department of Public Service and Administration
 Department of Provincial Affairs and Local Government
 South African Police Service
 Investment South Africa
 South African Chamber of Business
 Durban Chamber of Commerce and Industry
 National African Federated Chamber of Commerce and Industry
 British Chamber of Business in South Africa
 KwaZulu-Natal Marketing Initiative
 The Employment Bureau of Africa
 Free Market Foundation of Southern Africa
 Open Society Initiative for Southern Africa
 The Human Rights Commission
 The South African Law Society
 The Institute of Chartered Accountants
 Institute for Security Studies
 Idasa — SAMP
 Centre for Policy Studies
 Carnegie Endowment for Peace: Migration Project
 US Immigration and Naturalisation Service
 The UN High Commission for Refugees
 International Organisation for Migration
 Business South Africa
 Cosatu
 Fedusa
 Centre for Development and Enterprise
 Nedlac

American Chamber of Commerce
 Banking Council of South Africa
 International Education Association of South Africa
 University of the Witwatersrand
 University of Cape Town
 University of Pretoria
 University of the Free State
 Georgetown University
 South African technikons
 Chamber of Mines
 Japanese Chamber of Commerce
 Foreign Marriage and Family Protection Association
 Church of Jesus Christ of the Latter-Day Saints
 Chief State Legal Adviser
 South African Institute for International Affairs
 G Eisenberg
 Prof. L Schlemmer

IMPLICATIONS FOR PROVINCES

None

PUBLICATION

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PARLIAMENTARY PROCEDURE

The State Law Advisers and the Department of Home Affairs are of the view 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.

On 26 September 2001 the Joint Tagging Mechanism made the following finding in respect of the *Immigration Bill* [B 46—2001] (National Assembly—sec 75):

“The Bill was introduced as a section 75 Bill. Clause 12 of the Bill contains a money Bill provision within the meaning of section 77(1) of the Constitution, while the rest of the Bill deals with matters that are not subordinate and incidental to the appropriation of money or the imposition of taxes, levies or duties. Therefore, the Bill cannot be classified as a section 75 Bill.

Accordingly the JTM finds that the Bill is constitutionally out of order in terms of Joint Rule 161(1)(e).”

Notwithstanding the opinion of the Minister of Home Affairs that such classification was erroneous, the Bill has been corrected by an amendment to clause 12 of the Bill as originally introduced and has been reintroduced in terms of Joint Rule 162.