

The Evolution of the Immigration Act

from 2002 to the present day

A combination of:

The Immigration Act, Act 13 of 2002
The Immigration Amendment Act, Act 19 of 2004
The Immigration Amendment Act, Act 3 of 2007
and
The Immigration Amendment Act, Act 13 of 2011

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Explanatory note:

Text in **BOLD and highlighted** and/or **underlined** is the effective end result **after all amendments** up to present day.

New additions from the latest Amendment Bill are given in **underlined** and earlier amendments, substitutions and substantive deletions are set out in the numbered footnotes.

Blue text indicates words inserted into the original Act with the first amendment and ~~blue text~~ indicates minor deletions made with the first Amendment. **Blue text that is bold and highlighted** therefore indicates amendments/insertions made with the Amendment Act of 2004, which have been carried through or have not been deleted/amended by the Amendment Act of 2011.

Sections and subsections with a | in the right margin indicates major deletions effected by the latest Amendment Act (2011).

Minor punctuation/numbering amendments have not been indicated except where they materially affect the meaning or further references of or to a particular paragraph or subsection.

Special note with regard to substitution of words:

Clause 26 of the Immigration Amendment Act of 2011, reads as follows:

26. *The principal Act is hereby amended –*
- (a) *by the substitution for the word “permit” or “permits”, wherever it occurs in the Act, of the word “visa” or “visas”, as the case may be, except in cases where –*
 - (i) *reference is made to a permanent residence permit; and*
 - (ii) *there is an amendment effected by any of the sections of this Act, excluding this section;*
 - (b) *by the substitution for the words “temporary residence permit” or “temporary residence permits”, wherever they occur in the Act, of the word “visa” or “visas”, as the case may be;*
 - (c) *by the substitution for the word “condition” or “conditions”, wherever it occurs in the Act, of the words “terms and conditions”, except in cases where the phrase “terms and conditions” or “terms or conditions” are used; and*
 - (d) *by the substitution for the words “21 years”, wherever they occur in the Act, of the words “18 years”.*

We have made the relevant substitutions throughout this document (text in **red**).

Preamble

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 visas and permanent residence permits are issued as expeditiously as possible and on the basis of simplified procedures and objective, predictable and reasonable requirements and criteria, and without consuming excessive administrative capacity;
- (b) security considerations are fully satisfied and the State retains control on over the immigration of foreigners to the Republic;
- (c) interdepartmental coordination and public consultations enrich the management of immigration;¹
- (d) ~~the needs and aspirations of the age of globalization are respected and the provisions and the spirit of the General Agreement on Trade in Services is complied with~~ economic growth is promoted through the employment of needed foreign labour, foreign investment is facilitated, the entry of exceptionally skilled or qualified people is enabled, skilled human resources are increased, academic exchanges within the Southern African Development Community is facilitated and tourism is promoted;
- (e) ~~border monitoring is strengthened to ensure that the borders of the Republic do not remain porous and illegal immigration through them may be effectively detected, reduced and deterred~~ the role of the Republic in the continent and the region is recognised;
- (f) the entry and departure of all persons at ports of entry are efficiently facilitated, administered and managed;
- (g) immigration laws are efficiently and effectively enforced, deploying to this end significant administrative capacity of the Department of Home Affairs, thereby reducing the pull factors of illegal immigration;
- (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 foreign workers;
- (j) a policy connection is maintained between foreigners working in South Africa and the training of our nationals citizens;
- (k) push factors of illegal immigration may be addressed in cooperation with other Departments and the foreign states concerned;

¹ Paragraph (c) previously read: “(c) interdepartmental coordination ~~constantly enriches~~ and public consultations enrich the functions of immigration control ~~and that a constant flow of public inputs is present in further stages of policy formulation, including regulation making~~” – substitution took place in the Amendment Act of 2011.

- (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;
- (n) a human rights based culture of enforcement is promoted;
- (o) the international obligations of the Republic are complied with; and
- (p) civil society is educated on the rights of foreigners and refugees.

Section 1

Definitions and interpretations

1. (1) In this Act, unless the context indicates otherwise indicates -

“admission” means entering the Republic at a port of entry on the basis of the authority to do so validly granted by this Act or by an immigration officer in terms of this Act, and the verb “to admit” has a corresponding meaning in terms of section 9;²

“application” means a request in the prescribed form which complies with the requirements and provides the information and documentation which may be prescribed;

“advance passenger processing” means the pre-clearance of persons, in the prescribed manner, prior to boarding conveyances by means of a boarding advice issued to owners or persons in charge of conveyances.

“Board” means the Immigration Advisory Board contemplated in established by section 4 of this Act;

“border” means the national borders of the Republic and includes ports of entry, coastlines and the outer margin of territorial waters;³

“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;

“citizen” has the meaning assigned thereto in the South African Citizenship Act, 1995 (Act No. 88 of 1995) and “citizenship” has a corresponding meaning;

“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

² The Amendment Act of 2007 (which never came into force) added a further definition after “admission”, which read as follows: “*affiliate* means an associate member of a company or organisation”

³ The Amendment Act of 2007 (which never came into force) added a further definition after “border”, which read as follows: “*branch* means a branch as contemplated in section 21A of the Companies Act, 1973 (Act No. 61 of 1973)”

the Republic and **which applies for a corporate** permit **visa referred to in section 21;**

"court" means ~~an Immigration Court established in terms of section 37 of this Act~~ **a magistrate's court;**

"customary union" means a conjugal relationship according to indigenous law and custom and which is recognised and documented as prescribed customary union recognised in terms of the Recognition of Customary Marriages Act, 1998 (Act No. 120 of 1998);

"Department" means the Department of Home Affairs;

"depart or departure" means exiting the Republic from a port of entry in compliance with this Act ~~and the verb to depart has a corresponding meaning;~~⁴

"deport or deportation" means the action or procedure aimed at causing an illegal foreigner to leave the Republic involuntarily, or under detention in terms of this Act ~~and the verb "to deport" has a corresponding meaning;~~

"Director-General" means the Director-General of the Department;

"employer" includes a person contractually bound by the applicable employment contract as an employer or, in the case of a juristic person, its chief executive officer or the person to whom such officer has delegated the final responsibility in respect of personnel matters;

"foreign country" means a country other than the Republic;

"foreign state" means the juristic entity governing a foreign country;

"foreigner" means an individual who is ~~neither~~ **not a citizen** ~~nor a resident, but is not an illegal foreigner;~~

"illegal foreigner" means a foreigner who is in the Republic in contravention of this Act ~~and includes a prohibited person;~~

"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;

"immigration officer" means an officer ~~of the Department, or another person having the prescribed requirements, appointed as such from time to time by the Department and, for purposes of this Act, includes a person employed in, or contracted by, the Department who has been authorised by the Department to exercise certain powers and perform certain functions in the name of and on behalf of the Department~~ **appointed in terms of section 33 by the Director-General to perform the functions of either the permitting office, port of entry or inspectorate as contemplated in this Act;**

"marriage" means ~~a legally sanctioned conjugal relationship intended to be permanent and concluded under the laws of the Republic, or~~

⁴ The Amendment Act of 2007 (which never came into force) defined "depart or departure" as follows: "*depart or departure* means exiting the Republic from a port of entry to another country in compliance with this Act"

- (a) a marriage concluded in terms of –
 - (i) the Marriage Act, 1961 (Act No. 25 of 1961); or
 - (ii) the Recognition of Customary Marriages Act, 1998 (Act No. 120 of 1998); or
- (b) a legal marriage under the laws of a foreign country as prescribed from time to time, and includes a customary union a civil union concluded in terms of the Civil Union Act, 2006 (Act No. 17 of 2006); or
- (c) a marriage concluded in terms of the laws of a foreign country.

~~“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;~~

“Minister” means the Minister of Home Affairs;

“organ of state” means an organ of state as defined in section 239 of the Constitution;

“owner” means the owner of record and in the case of a ship, it includes the charterer of the ship a conveyance and any agent within the Republic of the owner or the charterer;

“passenger name record” means the record of the data of a person as contemplated in section 35(3)(a) created by the owner or person in charge of a conveyance or his or her authorised agents for each journey booked by or on behalf of any person;

“passport” means any passport or travel document containing the prescribed information and characteristics issued –

- (a) under the South African Passports and Travel Documents Act, 1994 (Act No. 4 of 1994);
- (b) on behalf of a foreign state recognised by the Government of the Republic to a person who is not a South African citizen;
- (c) on behalf of any international organisation as prescribed, including regional or sub-regional organisations, to a person who is not a South African citizen; or

any other document approved by the Minister and issued under special circumstances to a person who cannot obtain a document contemplated in paragraphs (a) to (c);

“permanent residence permit” means a permit contemplated in section 25, 26 or 27;

“port of entry” means a place designated as such by the Minister where all persons have to report before they may enter, sojourn or remain within, or depart from the Republic, in terms of section 9A;

“port of entry visa” means the authority to travel from a port of entry of another country to any port of entry of the Republic for the purposes of admission into the Republic, as contemplated in section 10A;

“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;

“prescribed” means provided for **prescribed by regulation**, the verb to prescribe has a corresponding meaning and “prescribed from time to time” refers to section 7(2);

“prohibited person” means any person referred to **contemplated in section 29** of this Act;

“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;

“regulations” means general rules adopted by the Minister after consultation with the Board in terms of this Act and published;

“Republic” means the Republic of South Africa and its territory;

“resident” means the holder of a permanent residence permit referred to in section 25 of this Act;

“ship” includes any vessel, boat, aircraft or other prescribed conveyance;

“spouse” means a person who is a party to –

- (a) a marriage,** or a customary union **as defined in this Act; or**
- (b) a permanent homosexual or heterosexual relationship** which calls for cohabitation and mutual financial and emotional support, and is proven by a prescribed affidavit substantiated by a notarial contract and “spousal relationship” has a corresponding meaning **as prescribed;**

“status” means the **status of a person as determined by the relevant visa or permanent or temporary residence permit issued granted to a person in terms of this Act** and includes the rights and obligations flowing therefrom, including any term and condition of residence imposed by the Department when issuing any such permit;⁵

“temporary residence permit” means a temporary residence permit referred to contemplated in section 10 of this Act;

“this Act” means this Act, including its schedules, and includes the regulations made pursuant thereto;

“training fund” means the public record referred to in section 2(2)(g)(i) of this Act;

“transit visa” means a transit visa contemplated in section 10B;

“undesirable person” means a person referred to contemplated in section 30 of this Act;

“visa” means the authority to temporarily sojourn in the Republic for the purposes of -

⁵ The Amendment Act of 2007 (which never came into effect), inserted the following definition after the definition of “status”: “*subsidiary* means a subsidiary as defined in section 1(1) of the Companies Act, 1973 (Act No. 61 of 1973).”

- (a) a transit through the Republic as contemplated in section 10B;
- (b) a visit as contemplated in section 11;
- (c) study as contemplated in section 13;
- (d) conducting activities in the Republic in terms of an international agreement to which the Republic is a party as contemplated in section 14;
- (e) establishing or investing in a business as contemplated in section 15;
- (f) working as a crew member of a conveyance in the Republic, as contemplated in section 16;
- (g) obtaining medical treatment as contemplated in section 17;
- (h) staying with a relative as contemplated in section 18;
- (i) working as contemplated in section 19 or 21;
- (j) retirement as contemplated in section 20;
- (k) an exchange programme as contemplated in section 22; or
- (l) applying for asylum as contemplated in section 23, whichever is applicable in the circumstances.⁶

“work” means business, commercial or remunerative activities within the Republic, excluding work on the basis of a permit referred to in sections 12 or 14, or work for a foreign employer pursuant to a contract which only partially calls for activities in the Republic, or work as a business or profession mainly based outside the Republic but requiring activities within the Republic **includes –**

- (a) conducting any activity normally associated with the running of a specific business; or
- (b) being employed or conducting activities consistent with being employed or consistent with the profession of the person, with or without remuneration or reward, within the Republic.

- (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.

⁶ The definition of “visa” prior to the Amendment Act of 2011, read as follows: “visa means the prescribed endorsement issued upon application on the valid passport of a foreigner granting such foreigner the authority to proceed to the Republic to report for a prescribed examination to an immigration officer at the port of entry with a view to admission on a specified temporary residence, which at any time before admission may be withdrawn by the Department the authority contemplated in section 10A to proceed to a port of entry”

OBJECTIVES AND STRUCTURES OF IMMIGRATION CONTROL

Section 2

{Section 2 was repealed by the Immigration Amendment Act of 2004, however, in the original Act of 2002, it read as follows:

“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;*
 - (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;*
 - (c) *detecting and deporting illegal foreigners;*
 - (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;*
 - (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;*
 - (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;*
 - (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;*
 - (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;*
 - (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;*
 - (ii) *where applicable, encouraging the training of citizens and residents by employers to reduce employers' 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 fashion as to defray the overall cost of its operation;*
 - (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.*
- (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;*
 - (b) *inspect institutions of learning to ensure that illegal foreigners are not enrolled therein;*
 - (c) *liaise with the South African Police Service to –*
 - (i) *ensure that the identity of people who are arrested, detained or convicted is checked for purposes of this Act; and*
 - (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;*
 - (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 –*
 - (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;*
 - (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*
 - (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;*
 - (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 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*
 - (m) *conduct any other activity called for by this Act or necessary for or conducive to its implementation.”}*

Section 3

Delegation of powers⁷

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

Section 4

Immigration Advisory Board

4. (1) The Immigration Advisory Board is hereby established.
- (2)⁸ (a) The Board shall consist of –
- (i) (aa) the Director-General;
 - (bb) the Head of the Immigration Services Branch of the Department;
 - (ii) any representative, at least equivalent to the rank of Deputy Director-General, from any department or organ of state whom the Minister considers relevant;
 - (iii) a person representing organised business; and
 - (iv) a person representing organised labour;
 - (v) up to five individual persons appointed by the Minister in the prescribed manner on the basis of their knowledge, experience and involvement pertaining to the immigration law, control, adjudication or enforcement.
- (b) The Minister shall designate from the members of the Board a Chairperson and Deputy Chairperson of the Board.⁹

⁷ Section 3 in the original Act was entitled “Powers of Department”. The whole section in its current form was a substitution effected with the Amendment Act of 2004. Please refer back to the Immigration Act of 2002 for the original wording of section 3.

⁸ The constitution of the Board, as contemplated in Section 4(2) has been revised with every amendment to the Immigration Act. Please refer back to the Immigration Act of 2002 and the Amendment Act of 2004, for previous wording of this particular subsection.

- (4) A member of the Board referred to in subsection (2)(a)(iii), (iv) and (v) 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;
 - (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;
 - (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;
 - (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
 - (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 administrative work connected with the performance of the functions of the Board shall be performed by officers of the Department, designated by the Director-General for that purpose.¹⁰
- (7)¹¹ 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.

⁹ Subsection (3) was deleted by the Amendment Act of 2004. In the original Act, it read as follows: “(3) The Board shall meet when called by the Chairperson and – (a) shall meet regularly; (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.”

¹⁰ Prior to the Amendment Act of 2004, subsection (5) read as follows: “The Board may request the Department to provide it with the necessary administrative capacity and assistance.”

¹¹ Subsection (6), which read: “(6) The Board may establish and operate through committees to carry out its functions” was deleted by the Amendment Act of 2004.

(9)¹² Subject to this Act, the Board shall operate and meet as prescribed.

Section 5¹³

Functions of Board

5. The Board shall –

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

Section 6

{Section 6 was repealed by the Immigration Amendment Act of 2004, however, in the original Act of 2002, it read as follows:

“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.
- (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.”}

Section 7¹⁴

¹² Subsection (8), which read: “(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” was deleted by the Amendment Act of 2004.

¹³ The Amendment Act of 2004 wholly substituted section 5. Please refer back to the Immigration Act of 2002 for the original wording of this section.

¹⁴ The Amendment Act of 2004 wholly substituted section 7, which was further amended by the Amendment Act of 2011. The original section 7 read as follows:

“Regulation making

- 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;
 - (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.
- (2) Only subsection (1)(b) and (c) shall apply in respect of any regulations which this Act requires to be prescribe from time to time.
- (3) The Board may request the Minister to –
- (a) reconsider any intended regulations prior to their promulgation; or
 - (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

Regulations

7. (1) The Minister may, after consultation with the Board, make regulations relating to –
- (a) the powers and duties of immigration officers;
 - (b) the steps to be taken to prevent the entry of illegal foreigners into the Republic and to facilitate the tracing and identification of illegal foreigners in, and their removal from, the Republic;
 - (c) the procedure regulating the entry into and departure from the Republic of persons at a port of entry, and the requirements and conditions to be complied with at such a port;
 - (d) the times and places of, and the manner of conducting, an enquiry relating to, or the examination of, persons entering or desiring to enter the Republic or who, having been found in the Republic, are suspected of being prohibited persons or unlawfully resident therein;
 - (e) the permits, a port of entry visa, visas, permanent residence permits and the certificates which may be issued under this Act, the requirements for the issuing of permits, a port of entry visa, visas, permanent residence permits and certificates and the terms and conditions to which such permits, port of entry visa, visas, permanent residence permits or certificates may be subjected, and the circumstances under which such permits, a port of entry visa, visas, permanent residence permits or certificates may be cancelled or withdrawn;
 - (f) the conditions terms and conditions upon which prohibited persons may be allowed to pass through the Republic while journeying or being conveyed to a place outside the Republic;
 - (g) the forms of warrants, permanent residence permits, a port of entry visa, visas, certificates or other documents to be issued or used, or of declarations to be made, or of registers to be kept, for the purposes of this Act, and the particulars to be provided on or inserted in any such document, declaration or register;
 - (h) the fees that may be charged in respect of overtime services required to be performed by immigration officers;
 - (i) the fees that may be charged in respect of the application for and issuing of a port of entry visa,

session and if Parliament is in recess when the regulation is published, within 12 days after the resumption of the session.

- visas, permanent residence permits and certificates and other services rendered in terms of this Act, including advance passenger processing and passenger name record information transmission;
- (j) the steps to be taken to prevent the departure from the Republic of a person not in possession of a passport or other appropriate documentation;
- (k) the requirements and conditions which should be complied with by any person who, on behalf of any other person, applies for a permit referred to in sections 11 to 22 and 25 to 27, and the registration of an immigration practitioner contemplated in section 46;
- (l) the manner in which payment of a deposit contemplated in section 34(3) may be enforced;
- (m) the steps to be taken to ensure proper exploitation of the local labour market before a work permit is issued in terms of section 19;
- (n) the circumstances whereunder and the manner in which a penalty shall be incurred by and recovered from the owner, agent, charterer or person in control charge of a conveyance and who conveyed a foreigner contemplated in section 35(9) to the Republic;
- (o) any matter that may be prescribed under this Act; and
- (p) generally, any matter required for the better achievement of the objects and purposes of this Act.
- (2) Different regulations may be made under subsection (1)(c) in respect of different ports of entry, and the forms of warrants, permanent residence permits, a port of entry visa, visas, certificates, documents, declarations or registers prescribed under subsection (1)(g) may differ in respect of different categories of persons.
- (3) A regulation made under subsection (1) may provide that any person who contravenes a provision thereof or fails to comply therewith shall be guilty of an offence and on conviction be liable to a fine, or to imprisonment for a period not exceeding 12 months.
- (4) The Minister may –
- (a) exempt a person or category of persons from paying fees prescribed under subsection (1)(h); and
- (b) withdraw an exemption granted to a person or a category of persons under paragraph (a).
- (5) Any fee which may be prescribed under subsection (1) shall be prescribed by the Minister with the concurrence of the Minister of Finance.

Review and appeal procedures

- 8. (1) An immigration officer who refuses entry to any person or finds any person to be an illegal foreigner shall inform that person on the prescribed form that he or she may in writing request the Minister to review that decision and –**
- (a) if he or she arrived by means of a conveyance which is on the point of departing and is not to call at any other port of entry in the Republic, that request shall without delay be submitted to the Minister; or**
 - (b) in any other case than the one provided for in paragraph (a), that request shall be submitted to the Minister within three days after that decision.**
- (2) A person who was refused entry or was found to be an illegal foreigner and who has requested a review of such a decision –**
- (a) in a case contemplated in subsection (1)(a), and who has not received an answer to his or her request by the time the relevant conveyance departs, shall depart on that conveyance and shall await the outcome of the review outside the Republic; or**
 - (b) in a case contemplated in subsection (1)(b), shall not be removed from the Republic before the Minister has confirmed the relevant decision.**

¹⁵ The Amendment Act of 2004 wholly substituted section 8. The original section 8 read as follows:
“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).
- (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).”

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

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

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

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

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

Section 9

Admission and departure

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

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

(3) No person shall ~~leave enter or depart from~~ the Republic –

- (a) unless in possession of a valid passport, ~~or a certificate issued by the Department upon application in lieu thereof;~~
- (b) unless, if he or she is a person under the age of 16 years who does not hold a passport, he or she is accompanied by his or her parent who holds a passport in which his or her name was entered in terms of the ~~provisions of the~~ South African Passports and Travel Documents Act, 1994 (Act No. 4 of 1994), or on behalf of any government or international organisation recognised by the Government of the Republic; ~~and~~
- (c) except at a port of entry, unless –
 - (i) in possession of a certificate issued by the ~~Department~~ Director-General granting permission upon application to ~~leave enter or depart from~~ the Republic at a place other than a port of entry within a certain period not exceeding six months at a

- time, provided that for good cause ~~an immigration officer~~ the Director-General may withdraw such permission; or
- (ii) exempted as an individual or falling within a category of persons exempted by the Minister, ~~as he or she deems fit~~, on the recommendation of the Director-General, which exemption may be withdrawn by the ~~Director-General at any time~~ Minister; and
 - (d) unless, ~~in the case of a resident~~, the entry or departure is recorded by an immigration officer; and
 - (e) unless examined by an immigration officer as prescribed.
- (4) A foreigner who is not the holder of a permanent residence permit may only enter the Republic as contemplated in this section if –
- (a) ~~by producing to an immigration officer~~ his or her passport ~~to be~~ is valid for ~~no~~ not less than 30 days after the expiry of the intended stay; and
 - (b) ~~if~~ issued with a valid temporary residence permit, as set out in this Act, ~~and may only depart as set out in this Act.~~

{Subsections 3 and 4 above were substituted with the following subsections with the Amendment Act of 2011.}

- (3) No person shall enter or depart from the Republic –**
- (a) unless he or she is in possession of a valid passport, and in the case of a minor, has his or her own valid passport;**
 - (b) except at a port of entry, unless exempted in the prescribed manner by the Minister, which exemption may be withdrawn by the Minister;**
 - (c) unless the entry or departure is recorded by an immigration officer in the prescribed manner; and**
 - (d) unless his or her relevant admission documents have been examined in the prescribed manner and he or she has been interviewed in the prescribed manner by an immigration officer: Provided that, in the case of a child, such examination and interview shall be conducted in the presence of the parent or relative or, if the minor is not accompanied by the parent or relative, any person of the same gender as the minor.**
- (4) A foreigner who is not the holder of a permanent residence permit contemplated in section 25 may only enter the Republic as contemplated in this section if –**
- (a) his or her passport is valid for a prescribed period; and**
 - (b) issued with a valid visa, as set out in this Act.**

Place of entry or exit

- 9A. (1) The Minister may, in the prescribed manner, designate any place in the Republic, which complies with the prescribed requirements, where all persons have to report before they may enter, sojourn or remain within, or depart from, the Republic.
- (2) The Minister may, on good cause shown, withdraw the designation contemplated in subsection (1) at any time.

TEMPORARY RESIDENCE

Section 10

Visas to temporarily sojourn in Republic¹⁶

10. (1) Upon admission, a foreigner, who is not the holder of a permanent residence permit, may enter and sojourn in the Republic only if in possession of a temporary residence permit visa issued by the Director-General for a prescribed period.
- (2) Subject to this Act, upon application in person and in the prescribed manner, a foreigner may be issued one of the following visas for the purposes of –
- (a) a transit through the Republic as contemplated in section 10B;
 - (b) a visit as contemplated in section 11;
 - (c) study as contemplated in section 13;
 - (d) conducting activities in the Republic in terms of an international agreement to which the Republic is a party as contemplated in section 14;
 - (e) establishing or investing in a business as contemplated in section 15;
 - (f) working as a crew member of a conveyance in the Republic as contemplated in section 16;
 - (g) obtaining medical treatment as contemplated in section 17;
 - (h) staying with a relative as contemplated in section 18;
 - (i) working as contemplated in section 19 or 21;
 - (j) retirement as contemplated in section 20;
 - (k) an exchange programme as contemplated in section 22; or
 - (l) applying for asylum as contemplated in section 23.¹⁷

¹⁶ The heading of Section 10, prior to the Amendment Act of 2011, was “Temporary residence permits”.

¹⁷ Prior to the Amendment Act of 2011, subsection (2) read as follows: “Subject to this Act, upon application ~~and upon prescribed examination at the port of entry in the prescribed manner and on the prescribed form~~, one of the temporary ~~residences~~ residence permits ~~set out~~ contemplated in sections 11 to 23 may be issued to a foreigner.” With the Amendment Act of 2007, the last phrase was amended to read “section 11 to 24.”

(3) If issued outside the Republic, a temporary residence permit visa is deemed to be of force and effect only after an admission.

(4) A temporary residence permit visa is to be issued on condition that the holder is not or does not become a prohibited or an undesirable person.

(5) The Director-General may for good cause, as prescribed, the Department may attach reasonable individual terms and conditions as may be prescribed to a temporary residence permit visa.

(6) (a) Subject to this Act, a foreigner, other than the holder of a visitor's or medical treatment visa, may apply to the Director-General in the prescribed manner to change his or her status or terms and conditions attached to his or her visa, or both such status and terms and conditions, as the case may be, while in the Republic;

(b) An application for a change of status attached to a visitor's or medical treatment visa shall not be made by the visa holder while in the Republic, except in exceptional circumstances as prescribed.¹⁸

(7) Subject to this Act, the Director-General may, on application in the prescribed manner and on the prescribed form, extend the period for which a permit visa contemplated in subsection (2) was issued.

(8) An application for a change in status does not provide a status and does not entitle the applicant to any benefit under the Act, except for those explicitly set out in the Act, or to sojourn in the Republic pending the decision in respect of that application.

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

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

Port of entry visa¹⁹

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

¹⁸ Prior to the Amendment Act of 2011, subsection (6) read as follows: "(6) Subject to this Act, a foreigner may apply to the Director-General in the prescribed manner and on the prescribed form to change his or her status or the conditions attached to his or her temporary residence permit, or both such status and conditions, as the case may be, while in the Republic."

¹⁹ Section 10A, inserted with the 2004 Amendment, was entitled simply "Visas", prior to the 2011 Amendment Act.

(2) Any person who holds a valid permit issued in terms of sections 13 to 22 and 25 to 27 –

(a) a valid visa for the purposes of –

(i) study as contemplated in section 13;

(ii) conducting activities in the Republic in terms of an international agreement to which the Republic is a party as contemplated in section 14;

(iii) establishing or investing in a business as contemplated in section 15;

(iv) working as a crew member of a conveyance in the Republic as contemplated in section 16;

(v) obtaining medical treatment as contemplated in section 17;

(vi) staying with a relative as contemplated in section 18;

(vii) working as contemplated in section 19 or 21;

(viii) retirement as contemplated in section 20;

(ix) an exchange programme as contemplated in section 22; or

(x) applying for asylum as contemplated in section 23; or

(b) a permanent residence permit issued in terms of sections 25 to 27,

shall, upon his or her entry into the Republic and after having been issued with that visa or permanent residence permit, be deemed to be in possession of a valid port of entry visa for the purposes of this section.²⁰

(3) A port of entry visa referred to in subsection (1) –

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

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

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

(4) The Minister may –

²⁰ Prior to the Amendment Act of 2011, section 10A(2) read as follows: “(2) Any person who holds a valid permit issued in terms of sections 13 to 22 and 25 to 27 shall, upon his or her entry into the Republic and after having been issued with that permit, be deemed to be in possession of a valid visa for the purposes of this section.”

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

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

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

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

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

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

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

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

Transit visas

10B. (1) Subject to subsection (4)(a), no person, other than a citizen or permanent resident, who is proceeding from a place outside the Republic to a destination outside the Republic, *including making use of the transit areas of South African ports of entry,*²¹ shall travel through the Republic, unless he or she is in possession of a transit visa issued for that purpose in terms of subsection (2).

(2) The Minister may, on the conditions terms and conditions that he or she may impose, authorise the issue of a transit visa to any person.

²¹ The phrase in italics was deleted with the Amendment Act of 2007 (which never came into effect).

(3) Any person who contravenes subsection (1) or who, while travelling through the Republic as contemplated in subsection (1), fails on demand by an immigration officer to produce a transit visa issued to him or her under subsection (2), or any holder of any such transit visa who contravenes any condition terms and conditions of that visa –

(a) shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding two years; and

(b) may be dealt with as an illegal foreigner, whether or not that person has been convicted or sentenced as contemplated in paragraph (a).

(4) The Minister may –

(a) exempt any person or category of persons from this section;

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

(c) withdraw any exemption granted under paragraph (a) to any category of persons or to any person and, in the case of a person, whether or not he or she was exempted as an individual or as a member of a category of persons.

Section 11

Visitor's permit visa

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

(a) holds a visa; or complies with section 10A; and

(b) is a citizen of a foreign state prescribed from time to time and provides the financial guarantees prescribed from time to time in respect of his or her departure;

Provided that such permit visa –

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

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

(aa) an academic sabbatical;

- (bb) voluntary or charitable activities;
- (cc) research; or
- (dd) any other prescribed activities and cases activity.²²

(2) The holder of a visitor's permit visa may not conduct work, unless authorised by the Director-General in the prescribed manner and subject to the prescribed requirements and conditions.²³

(5)²⁴ Special financial and other guarantees may be prescribed in respect of the issuance of a visitor's permit visa to certain prescribed classes of foreigners prescribed from time to time.

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

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

Section 12

{Section 12 was repealed by the Immigration Amendment Act of 2004, however, in the original Act of 2002, it read as follows:

"Diplomatic permit

²² The Amendment Act of 2007 restructured and renumbered subsection (1) to read as follows:

"(1) A visitor's permit may be issued for any purpose other than those provided for in sections 13 to 24, and subject to subsection (2), by the Director-General in respect of a foreigner who complies with section 10A and provides the financial or other guarantees prescribed in respect of his or her departure: Provided that such permit – (a) may not exceed three months and upon application may be renewed by the Director-General for a further period which shall not exceed three months; or (b) may be issued by the Director-General upon application for any period which may not exceed three years to a foreigner who has satisfied the Director-General that he or she controls sufficient available financial resources, which may be prescribed, and is engaged in the Republic in – (i) an academic sabbatical; (ii) voluntary or charitable activities; (iii) research; or (iv) any other prescribed activity."

²³ The Amendment Act of 2007 (which never came into effect), substituted subsection (2) with the following subsection: "(2) The holder of a visitor's permit may not conduct work: Provided that the holder of a visitor's permit issued in terms of subsection (1)(a) or (b)(iv) may be authorised by the Director-General in the prescribed manner and subject to the prescribed requirements and conditions to conduct work."

²⁴ Subsections 3 and 4 were deleted with the Immigration Amendment Act of 2004, having read as follows in the original Act: "(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. (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."

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 –*
- (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;*
 - (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*
 - (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.”}*

Section 13

Study visa

- 13. (1) A study visa may be issued, in the prescribed manner, to a foreigner intending to study in the Republic for a period not less than the period of study, by the Director-General: Provided that such foreigner complies with the prescribed requirements.**
- (2) The holder of a study visa may conduct certain work as prescribed.²⁵**

Section 14

²⁵ Section 13 previously read:

“(1) A study permit may be issued to a foreigner intending to study in the Republic for longer than three months by -

(a) the ~~Department~~ Director-General 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 –

- (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;
- (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
- (vi) undertakes to notify the Department when such foreigner has completed his or her studies, or is no longer performing them satisfactorily.

(2) ~~The Director-General shall~~ ~~when when~~ so requested by and after consultation with the Department of Education, ~~the Department shall~~ determine an ad hoc fee for the issuance of study permits in respect of institutions ~~which are~~ publicly funded or subsidised.”

Substitution took place with the Amendment Act of 2011.

Treaty permit visa

14. (1) A treaty permit visa 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 A treaty permit visa may be issued by –

(a) the Department Director-General, as prescribed; or

(b) a department or another organ of state responsible for the implementation of the treaty concerned under a delegation from the Director-General: Provided that—²⁶

(i) information relating to the failure of such foreigner to comply with the terms and conditions of the permit visa and to depart when required is conveyed to the Department Director-General;

(ii) the organ of state concerned satisfies the Department Director-General that, under the circumstances, it has capacity to perform this function; and

(iii) the permit visa is issued in accordance with the prescribed requirements, procedures and forms for the issuance of such permit are prescribed.

Section 15

Business permit visa

15. (1) A Subject to subsection (1A), a business permit visa may be issued by the Director-General to a foreigner intending to establish or invest in, or who has established or invested in a business in the Republic in which he or she may be employed, and an appropriate permit visa for the duration of the business permit visa to the members of such foreigner's immediate family: Provided that –²⁷

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

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

(c) such foreigner has undertaken to –

²⁶ This paragraph (the words in subsection (b) preceding subsection (b)(i)) originally read: “(b) the Department of Foreign Affairs or ~~the other~~ another organ of state responsible for the implementation of the treaty concerned under a delegation from the ~~Department~~ Director-General, provided that –”. This amendment took place with the 2011 Amendment Act.

²⁷ Prior to the 2011 Amendment Act, this paragraph read as follows: “A business permit may be issued by the ~~Department~~ Director-General to a foreigner intending to establish or invest in, ~~or who has established or invested in~~ a business in the Republic in which he or she may be employed, and ~~an appropriate permit for the duration of the business permit~~ to the members of such foreigner's immediate family: Provided that –”

(i) comply with any relevant registration requirements set out in any law administered by the South African Revenue Service; and

(ii) employ the prescribed percentage or number of citizens or permanent residents within a period of 12 months from the date of issue of the visa.²⁸

(1A) No business visa may be issued or renewed in respect of any business undertaking which is listed as undesirable by the Minister from time to time in the *Gazette*, after consultation with the Minister responsible for trade and industry.

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

(3) The Department Director-General may reduce or waive the capitalisation requirements referred to in subsection (1)(a) for businesses which are prescribed ~~from time to time~~ to be in the national interest, or when so requested by the Department of Trade and Industry.²⁹

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

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

Section 16

Crew permit visa

16. (1) The Director-General may, as prescribed, issue a crew permit visa to a foreigner who is a member of the crew of a conveyance.³⁰

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

²⁸ Subsection (c) here was originally subsection (d). Original subsection (c) read as follows: "(c) a chartered accountant certifies compliance with the provisions of this Act," – deletion took place with the Amendment Act of 2004.

²⁹ Immigration Amendment Act of 2007 (which never came into effect) amended this subsection by substituting the words "capitalisation requirements" with *financial or capital contribution*.

³⁰ Subsection (1) originally read as follows: "(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." – Substitution took place with the Immigration Amendment Act of 2004.

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

Section 17

Medical treatment permit visa

17. (1) A medical treatment permit visa 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.

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

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

Section 18

Relative's permit visa

18. (1) A relative's permit visa may be issued for the prescribed period by the Department Director-General to a foreigner who is a member of the immediate family of a citizen or a permanent

resident, provided that such citizen or permanent resident provides the prescribed financial assurance.³¹

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

Section 19

Work permit visa

19. (1) A quota work permit may be issued by the Department Director-General, as prescribed, to a foreigner if the foreigner falls within a specific professional category or within a specific occupational class determined by the Minister at least annually by notice in the *Gazette* after consultation with the Ministers of Labour and Trade and Industry, and as long as the number of work permits so issued for such category or class does not exceed the quota determined in the notice.

(2) A general work permit visa may be issued by the Department Director-General to a foreigner not falling within a category or class contemplated in subsection 1 (4) (1) if the prospective employer –

- (a) satisfies the Department Director-General in the manner prescribed that despite diligent search he or she has been unable to employ a person in the Republic with qualifications or skills and experience equivalent to those of the applicant;³²
- (b) satisfies the Director-General in the prescribed terms and conditions under which he or she intends to employ that foreigner, including salary and benefits, are not inferior to those prevailing in the relevant market segment for citizens, taking into account applicable collective bargaining agreements and other applicable standards; and
- (c) has committed agreed in writing to notify the Department Director-General when such foreigner is no longer employed or is employed in a different capacity or role³³

and who complies with the prescribed requirements.

(3) A general work permit contemplated in subsection (2) shall lapse if, within six months of its issuance, and within every year

³¹ Subsections (a) and (b) here following were deleted with the Amendment Act of 2004 – “(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.”

³² Amendment Act of 2004 retracted original subsection (b), which read as follows: “(b) produces certification from a chartered accountant that the terms and conditions under which he or she intends to employ such foreigner, including salary and benefits, are not inferior to those prevailing in the relevant market segment for citizens and residents, taking into account applicable collective bargaining agreements and other applicable standards, as recorded by the Department of Labour, if any, provided that – (i) a copy of such certification shall be conveyed to a prescribed office of the Department of Labour; and (ii) such certification shall lapse if objected to for good cause by such office of the Department of Labour within 15 calendar days of its receipt;” and substituted it for the one above.

³³ Amendment Act of 2004 retracted subsection (d), which read as follows: “(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.”

thereafter, its holder fails to submit **satisfactory proof** to the **Department Director-General** that he or she is still employed and of the terms and conditions of his or her employment, including the job description; **Provided that a general work permit shall remain valid for a period not longer than six months in respect of a holder whose employment contract has been terminated until that holder has exhausted all applicable rights of recourse; Provided further that the period may be extended for further periods of three months at a time on submission of proof to the satisfaction of the Director-General that, due to circumstances beyond the control of the holder, the recourse procedures have not been finalized.**

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

(5) An intra-company transfer work permit may be issued by the **Department Director-General** to a foreigner who is employed abroad by a business operating in the Republic in a branch, subsidiary or affiliate relationship and who by reason of his or her employment is required to conduct work in the Republic for a period not exceeding two³⁴ years, provided that -

- (a) the employer undertakes that it will take ~~adequate or~~ prescribed measures to ensure that such foreigner will at all times comply with the provisions of this Act, and will immediately notify the **Department Director-General** if it has reason to believe otherwise; and³⁵
- (b) the employer furnishes the prescribed financial guarantees to defray deportation costs should such foreigner fail to depart when no longer allowed to sojourn in the Republic.

{Subsections 4 & 5 above substituted with the following sections with the 2011 Amendment Act.}

(4) Subject to any prescribed requirements, a critical skills work visa may be issued by the Director-General to an individual possessing such skills or qualifications determined to be critical for the Republic from time to time by the Minister by notice in the Gazette and to those members of his or her immediate family

³⁴ Immigration Amendment Act of 2007 (which never came into effect) amended this subsection by substituting *two* with *four* here.

³⁵ Original subsection (a) was deleted with the Amendment Act of 2004. It read as follows: "(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;"

determined by the Director-General under the circumstances or as may be prescribed.

(5) An intra-company transfer work visa may be issued by the Director-General to a foreigner who complies with the prescribed requirements.

(6) The holder of an intra-company transfer work permit may conduct work only for the employer referred to in subsection (5) and in accordance with the ~~job description and other elements contemplated in the certification referred to in subsection (5) or~~ requirements set out in his or her permit.

Section 20

Retired person permit visa

20. (1) A retired person permit visa 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

(b) a minimum prescribed net worth.

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

(3) A retired person permit visa 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).³⁶

Section 21

Corporate permit visa

21. (1) A Subject to subsection (1A), a corporate permit visa may be issued by the ~~Department~~ Director-General to a corporate applicant, to employ foreigners who may conduct work for such corporate applicant in the Republic.

(1A) No corporate visa may be issued or renewed in respect of any business undertaking which is listed as undesirable by the

³⁶ Section 20, as given here, is still in force in its original form. Since published in the Immigration Act of 2002, this section was never amended, except in the Immigration Amendment Act of 2007, which never came into effect. The amendment contemplated in 2007 was the insertion of a subsection 1A after subsection (1), which read as follows: “(1A) The spouse and dependent children accompanying the holder of a retired person permit may be issued with an appropriate permit issued in terms of this Act.”

Minister from time to time in the *Gazette*, after consultation with the Minister responsible for trade and industry.

(2) The Director-General shall determine, in consultation with the prescribed departments, the maximum number of foreigners to be employed in terms of a corporate permit visa by a corporate applicant, after having considered –³⁷

(a)³⁸ 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 visa will at ~~any time~~ all times comply with the provisions of this Act and the corporate permit visa; and
- (ii) immediately notify the ~~Department~~ Director-General if it has reason to believe that such foreigner is no longer in compliance with subparagraph (i) ~~above~~;

(b) the financial guarantees posted in the prescribed amount and form by the corporate applicant to defray deportation and other costs should the corporate permit visa be withdrawn, or certain foreigners fail to leave the Republic when no longer subject to the corporate permit visa; and

(c) corroborated representations made by the corporate applicant in respect of the need to employ foreigners, their job descriptions, the number of citizens or permanent residents employed and their positions, and other prescribed matters.

(3) The ~~Department~~ Director-General may withdraw or ~~modify~~ amend the a corporate permit visa for good and reasonable cause.

(4) The Minister may, ~~in~~ after consultation with the Minister of Trade and Industry or Minerals and Energy or Agriculture, as the case may be, and the Minister of Labour, ~~may~~ designate certain industries, or segments thereof, in respect of which the Government may –

(a) reduce or waive the requirements of subsection (2)(c); or

(b) enter into agreements with one or more foreign states and set as a condition ~~terms and conditions~~ of a corporate permit visa that its holder –

- (i) employs foreigners partially, mainly or wholly from such foreign countries; and

³⁷ Prior to the Amendment Act of 2011, this paragraph read as follows: “(2) After consultation with the Departments of Labour and ~~of~~ Trade and Industry, the ~~Department~~ Director-General shall determine the maximum number of foreigners to be employed in terms of a corporate permit by a corporate applicant, after having considered –”

³⁸ The Immigration Amendment Act of 2004 deleted the original subsection 2(a), which read: “(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;”

- (ii) remits a portion of the salaries of such foreigners to such foreign countries;
 - (c) apply this subsection in respect of foreigners required for seasonal or temporary peak period employment; or
 - (d) waive or reduce the requirement of subsection (2)(b) under special conditions.
- (5) The holder of a corporate permit may also employ foreigners in terms of section 19.
- (6) A foreigner employed in terms of a corporate visa shall work for the holder of that corporate permit.**

Section 22

Exchange permit visa

- 22. An exchange permit visa 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 learning institution, in conjunction with a learning institution or an organ of a foreign state, provided that –**
 - (i) after consultation with the Board, the Minister may delegate the authority to issue such permits to such organ of state or learning institution if such organ of State has satisfied the Minister that it can ensure the compliance of such foreigner with this Act and report reports to the Department Director-General on the stages and the completion of the relevant programme together with other prescribed information; and**
 - (ii) it may be prescribed that, in respect of certain programmes, upon expiration of such permit visa such foreigner may not qualify for a status until he or she has complied with the requirements of a prescribed period of physical presence in his or her foreign country or of domicile outside the Republic; or**
 - (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 himself or herself to –**
 - (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 visa; and**
 - (cc) report to the Department the failure of the foreigner to comply with the terms of his or her permit visa or to depart when so required;**

- (ii) such foreigner may not conduct work other than work for which the permit visa 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 within two years after the expiry of the exchange permit visa, which requirement may be waived by the Department Director-General in extraordinary circumstances;³⁹
- (iv) no visa may be granted under this section if the offer to conduct work pertains to an undesirable work as published by the Minister from time to time in the Gazette, after consultation with the Minister responsible for trade and industry.

Section 23

Asylum transit permit visa

23. (1) The Director-General may, subject to the prescribed procedure under which an asylum transit visa may be granted, issue an asylum transit visa to a person who at a port of entry claims to be an asylum seeker, valid for a period of five days only, to travel to the nearest Refugee Reception Office in order to apply for asylum.
- (2) Despite anything contained in any other law, when the visa contemplated in subsection (1) expires before the holder reports in person at a Refugee Reception Office in order to apply for asylum in terms of section 21 of the Refugees Act, 1998 (Act No. 130 of 1998), the holder of that visa shall become an illegal foreigner and be dealt with in accordance with this Act.⁴⁰

Section 24

{The Amendment Act of 2011 repeals Section 24, which read:

"Cross-border and transit passes permits

24. (1) The ~~Department~~ Director-General may issue a cross-border ~~pass with the same effect as a multiple admission visitor's permit~~ to a citizen or a permanent

³⁹ The Amendment Act of 2011 notes that "and" should be deleted from Section 22(b)(iii), but since there is no "and" in this clause we can only assume that that particular deletion is meant for Section 22(b)(ii).

⁴⁰ Prior to the Amendment Act of 2011, Section 23 read as follows: "(1) The ~~Department~~ Director-General may issue an asylum transit permit to a person who at a port of entry claims to be an asylum seeker ~~subject to the Refugees Act, 1998 (Act No. 130 of 1998), which permit shall be valid for a period of 14 days only on any prescribed terms and conditions.~~ (2) Despite anything contained in any other law, when the permit contemplated in subsection (1) expires before the holder reports in person to a Refugee Reception Officer at a Refugee Reception Office in order to apply for asylum in terms of section 21 of the Refugees Act, 1998 (Act No. 130 of 1998), the holder of that permit shall become an illegal foreigner and be dealt with in accordance with this Act." *In the original Act, Section 23 was entitled simply "Asylum".*

resident or a foreigner who is a citizen or a resident of a prescribed 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.~~

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

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

PERMANENT RESIDENCE

Section 25

Permanent residence

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.

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

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

Section 26

Direct residence

26. Subject to section 25 and any prescribed requirements, the Director-General may issue a permanent residence permit to a foreigner who –

- (a) has been the holder of a work permit ~~visa,~~ including one issued under a corporate permit, in terms of this Act for five years and has proven to the satisfaction of the Director-General that he or she has received an offer for permanent employment, ~~provided that~~ - ⁴¹

⁴¹ The provisions specified in the Immigration Act of 2002, which were deleted with the Amendment Act of 2004, read as follows: “(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

- (b) is has been the spouse of a citizen or permanent resident for five years, ~~provided that~~ and the Director-General is satisfied that a good faith spousal relationship exists: ~~Provided that such permanent residence permit shall lapse if at any time within two years from the issuing of that permanent residence permit the good faith spousal relationship no longer subsists, save for the case of death~~⁴²
- (c) is a child under the age of 21⁴³ of a citizen or permanent resident ~~under the age of 21~~, provided that such permit shall lapse if such foreigner does not submit an application for its confirmation within two years of his or her having turned 21 years **18 years** of age; or
- (d) is a child of a citizen.

Section 27

Residence on other grounds

27. The Director-General may, subject to any prescribed requirements, 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~~ **has proven to the satisfaction of the Director-General that the position exists and that the position and related job description was advertised in the prescribed form and no suitably qualified citizen or permanent resident was available to fill it;**⁴⁴
 - (ii) the application falls within the yearly limits of available permits prescribed ~~from time to time~~ for each sector of industry, trade and commerce, after

market segment for citizens and residents, taking into account applicable collective bargaining agreements and other standards.”

⁴² Phrasing of subsection (b) was amended with the Amendment Act of 2004, with the deletion of subsections (i) and (ii), reading as follows: “(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.”

⁴³ One would assume that when changing “21 years” to “18 years” the Amendment Act of 2011 meant to change this particular clause in its totality, but as the wording of the substitution clause is specific and there is no further amendment made to this clause in the Amendment Act of 2011, we have left it as is and put it down to an oversight which will hopefully be clarified in the Regulations.

⁴⁴ An additional subsection here following was deleted with the Amendment Act of 2004, which read: “(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;”

- consultation with the Departments of Trade and Industry, Labour and Education; and⁴⁵
- (iii) the permit may be extended to such foreigner's spouse and children younger than 21 years 18 years of age;
- (b) taking into account any prescribed requirements, has demonstrated to the satisfaction of the Department Director-General that he or she possesses extraordinary skills or qualifications, and to those members of such foreigner's immediate family determined by the Department Director-General under the circumstances or by regulation as may be prescribed;
- (c) intends to establish or has established a business in the Republic, as contemplated in section 15, and investing in it or in an established business, as contemplated in section 15, 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: Provided that –
- (i) the Department Director-General may waive or reduce such capitalisation requirements for businesses prescribed from time to time to be in the national interest or when so requested by the Department of Trade and Industry; and
- (ii) the permanent residence permit shall lapse if the holder fails to renew such certification prove within two years of the issuance of the permanent residence permit, and three years thereafter, to the satisfaction of the Director-General, that the prescribed financial contribution to be part of the intended book value is still invested as contemplated in this paragraph;⁴⁶
- (d) is a refugee referred to in section 27(c) of the Refugees Act, 1998 (Act No. 130 of 1998), subject to any prescribed requirement;
- (e) intends to retire in the Republic, provided that a chartered accountant acting on behalf of such foreigner certifies that such foreigner proves to the satisfaction of the Director-General that he or she –

⁴⁵ Subsection (ii) as given here was substituted with the following subsection in the Amendment Act of 2007 (which never came into effect): "(ii) the application falls within the specific professional category or within the specific occupational class contemplated in section 19(1); and"

⁴⁶ Subsection (c) was substituted with the following subsection in the Amendment Act of 2007 (which never came into effect): "(c) intends to establish or has established a business in the Republic and investing in it or in an established business the prescribed financial or capital contribution to be part of the intended book value, and to the members of such foreigner's immediate family, provided that – (i) the Director-General may waive or reduce such financial or capital contribution for businesses prescribed to be in the national interest or when so requested by the Department of Trade and industry; and (ii) the permit shall lapse if the holder fails to prove within two years of the issuance of the permit and three years thereafter, to the satisfaction of the Director-General, that the prescribed financial or capital contribution to be part of the intended book value is still invested as contemplated in this paragraph."

- (i) has the right to a pension or an irrevocable annuity or retirement account which will give such foreigner a prescribed minimum payment for the rest of his or her life; or
- (ii) has a minimum prescribed net worth;
- (f) has ~~provided a certification by a chartered accountant~~ **proven to the satisfaction of the Director-General** that he or she has a prescribed minimum net worth and has paid a prescribed amount to the ~~Department~~ **Director-General**; or
- (g) is the relative of a citizen or **permanent** resident within the first step of kinship.

Section 28

Withdrawal of permanent residence permit

28. The Department may withdraw a permanent residence permit if its holder –

- (a) ~~within four years of the issuance of such permit, has been~~ **is convicted of any of the offences listed in Schedules 1 and 2;**⁴⁷
- (b) ~~has failed to comply with the terms and conditions of his or her permit;~~⁴⁸
- (c) has been absent from the Republic for more than three years, provided that –
 - (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 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 such person; or

⁴⁷ Subsection (a) was substituted with the following subsection in the Amendment Act of 2007 (which never came into effect): “(a) is convicted of any of the offences – (i) listed in Schedules 1 and 2; or (ii) in terms of this Act.”

⁴⁸ Prior to the Amendment Act of 2004, subsection (b) read as follows: “(b) has been convicted three times of any of the offences listed in Schedules 1 and 2;”

- (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;
- (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
- (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
- (d) has not taken up residence in the Republic within one year of the issuance of such permit.

EXCLUSIONS AND EXEMPTIONS

Section 29

Prohibited persons

29. (1) The following foreigners are prohibited persons and do not qualify for a port of entry visa, admission into the Republic, a temporary visa or a permanent residence permit:
- (a) Those infected with or carrying infections, communicable or other diseases or viruses 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, human smuggling, trafficking in persons, murder, torture, ~~drug trafficking,~~ drug-related charges, money laundering or kidnapping;
 - (c) anyone previously deported and not rehabilitated by the ~~Department~~ Director-General in the prescribed manner;
 - (d) a member of or adherent to an association or organisation or association utilising crime or terrorism to pursue its ends; and
 - (f) anyone found in possession of a fraudulent residence permit, visa, passport, permanent residence permit or identification document.

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

Section 30

Undesirable persons

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

- (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;
- (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;
- (g) anyone with previous criminal convictions without the option of a fine for conduct which would be an offence in the Republic, with the exclusion of certain prescribed offences; and
- (h) any person who has overstayed the prescribed number of times.

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

Section 31

Exemptions

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, which such consent subsists; and
- (b) the officers and crew of ~~an official~~ a public ship conveyance of a foreign state, while such ship conveyance is in the port of entry.

(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 admitted ~~to~~ and sojourn in the Republic ~~for a period not exceeding six months,~~ provided that such foreigners do not intend to reside in the Republic permanently;
- (b) grant a foreigner or a category of foreigners the rights of permanent residence for a specified or unspecified period when special circumstances exist which ~~would~~ justify such a decision: Provided that the Minister may –
 - (i) exclude one or more identified foreigners from such categories; and
 - (ii) for good cause, withdraw such rights from a foreigner or category of foreigners;
- (c)⁴⁹ for good cause, waive any prescribed requirements ~~or form,~~ ~~provided that if such consultation requirement would unduly delay an urgent action, the Minister may inform the Board after the fact of any action taken under this subsection and of the reasons for the urgency; and~~
- (d) for good cause, withdraw an exemption granted by him or her in terms of this section.

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

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

ENFORCEMENT AND MONITORING

Section 32

⁴⁹ Subsection (c) was deleted with the Amendment Act of 2004 and subsection (d) was renamed to be subsection (c). The deleted subsection read as follows: “(c) authorise any person or category of persons to enter the Republic at a place other than a port of entry, in which case the Department shall issue to such person(s) the prescribed written permission or passport endorsement, provided that such authorisation may be withdrawn at any time by the Minister; and”

Illegal foreigners

32. (1) Any illegal foreigner shall depart, unless authorised by the Department Director-General in the prescribed manner to remain in the Republic pending his or her application for a status.
- (2) Any illegal foreigner shall be deported.

Section 33

Inspectorate

33. (1) An inspectorate shall be is hereby established through regulations and shall consist of such the persons, including immigration officers, as may be determined by the Minister.
- (2)⁵⁰
- (a) The Minister shall appoint the head of the inspectorate.
 - (b) The Director-General shall appoint immigration officers and other persons required to exercise the functions of the inspectorate.
 - (c) The Minister may prescribe –
 - (i) the procedure to be followed in appointment of immigration officers or categories of immigration officers;
 - (ii) the requirements for the appointment contemplated in subparagraph (i); and
 - (iii) the allocations of functions to immigration officers or categories of immigration officers.
- (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 in accordance with subsections (5) and (9);
 - (b) by notice in writing call upon any person who is in possession of or has the custody of or control over any thing which in the opinion of the Department Director-General is relevant to the investigation to produce such thing, and the Department Director-General may inspect and retain any thing so produced for a reasonable time; and
 - (c) by notice in writing call upon any person to appear before the Department Director-General and to give evidence or to answer questions relevant to the subject matter of the investigation:
- Provided that any of such notices shall specify the time when and the place where the person to whom it is directed

⁵⁰ Prior to the Amendment Act of 2004, subsection (2) simply read as follows: “(2) On the recommendation of the Director-General, the Minister shall appoint the head of the inspectorate.”

shall appear, be signed by an immigration officer, be served by an immigration officer or by a sheriff by delivering a copy thereof to the person concerned or by leaving it at such person's last known place of residence or business, and shall specify the reason why the article thing is to be produced or the evidence is to be given.

(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 authorizes 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 particular regarding his or her authority to execute such a warrant.

(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
- (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.

(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

(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.

(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.

(12) A warrant issued in terms of this section may be issued on any day and shall be in force until –

(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;

(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.

(14) When exercising powers under this section, an immigration officer shall clearly identify him or herself as such by means of adequate identification.

Section 34

Deportation and detention of illegal foreigners

34. (1) Without ~~the~~ need for a warrant, an immigration officer may arrest an illegal foreigner or cause him or her to be arrested, and shall, irrespective of whether such foreigner is arrested, deport him or her or cause him or her to be deported and may, pending his or her deportation, detain him or her or cause him or her to be detained in a manner and at ~~the a place under the control or administration of the Department~~ determined by the Director-General, provided that the foreigner concerned –

(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;

(b) may at any time request any officer attending to him or her that his or her detention for the 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;

(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

(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.

(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 as officer may in the prescribed manner enforce payment of such deposit.

(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.

(5) Any person other than a citizen or a permanent 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,

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.

(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.

(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 permit 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.

(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 –

- (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;
- (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;
- (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

(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) A person who escaped or attempts to escape from detention imposed under this Act shall be guilty of an offence and may be arrested without a warrant.

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

Section 35

Duties with regard to conveyances⁵¹

35. (1) Save for exceptional circumstances necessitating otherwise, no person in charge of a conveyance shall cause that conveyance to enter the Republic at any place other than at a port of entry.

(2) (a) The owner or person in charge of a prescribed conveyance entering into, departing from or in transit through the Republic shall, comply with the provisions of this section by enabling electronic transmission and receipt of the prescribed information to the Director-General in the prescribed manner.

(b) The owner or person in charge of a conveyance entering into, departing from or in transit through the Republic, shall within the prescribed period prior to boarding persons onto his or her conveyance, electronically transmit the prescribed information to the Director-General in respect of each person.

(c) The owner or person in charge of a conveyance shall act in accordance with a boarding advice issued by the Director-General in respect of each person contemplated in paragraph (b).

(3) (a) The owner or person in charge of a conveyance entering into, departing from or in transit through the Republic by air or conveying persons on domestic flights within the Republic, shall comply with the provisions of this section by enabling electronic transmission of the prescribed passenger name record information in respect of all persons booked to travel on his or her conveyance to the Director-General in the prescribed manner.

(b) The owner or person contemplated in paragraph (a) shall, within the prescribed period prior to the scheduled time of departure of his or her conveyance, electronically

⁵¹ The Amendment Act of 2004 gave Section 35 its current title. In the Immigration Act of 2002, prior to amendment, Section 35 was simply entitled "Ships". The Immigration Act of 2011 wholly substituted this section for its present form. Please refer back to the Amendment Act of 2004 for prior wording and amendments.

transmit the prescribed passenger name record information to the Director-General in the prescribed manner.

(c) The information contemplated in paragraph (a) shall be used by the Director-General for the better achievement of the objectives of this Act and the Director-General shall adopt prescribed measures to safeguard the protection of that information in accordance with legislation governing the protection of personal information.

(4) An immigration officer or other authorised person employed by the Director-General may –

(a) board any conveyance which is entering or has entered into any port of entry and on good cause shown prohibit or regulate disembarkation from, or the offloading of, such conveyance 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 person in charge of a conveyance to park, moor or anchor that conveyance in such port of entry at such distance from the shore or landing place or in such position as such immigration officer or other authorised person employed by the Director-General may direct.

(5) The person in charge of a conveyance entering or prior to entering a port of entry shall upon demand deliver to an immigration officer –

(a) a list stating –

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

(ii) such other details as may be prescribed;

(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 conveyance; and

(d) a return, under the hand of the medical officer of that conveyance or, if there is no such medical officer, under the hand of the person in charge of a conveyance himself or herself, stating –

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

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

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

(iv) any other prescribed matter or event;

Provided 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

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

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

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

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

(9) A person in charge of a conveyance shall ensure that any foreigner conveyed to a port of entry, for purposes of traveling to a foreign country, holds a valid passport and transit visa or port of entry visa, if required.

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

Section 36

{The Amendment Act of 2004 repealed Section 36, which read:

“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.*

(2) *The Department may receive a delegation from the South African Revenue Service or the Commissioner therefore, 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.*

(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.”}*

IMMIGRATION COURTS

Section 37

{The Amendment Act of 2004 repealed Section 37, which read:

“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, 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.
- The Rules Board for Courts of Law established in terms of 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.”}

DUTIES AND OBLIGATIONS

Employment

38. (1) No person shall employ –
- (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 from 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.
- (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 –
- (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.

- (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 –
 - (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.

Section 39

Learning Institutions

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.
- (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.

Section 40⁵²

Keeping of registers of lodgers by certain persons

40. (1) The person in charge of any premises, whether furnished or unfurnished, where lodging or sleeping accommodation is provided for payment or reward shall, if those premises fall within

⁵² Prior to the Amendment of Act of 2004, section 40 was entitled simply "Accommodation" and read as follows: "(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."

a prescribed class, in the prescribed manner keep a register of all persons who are provided with lodging or sleeping accommodation thereon, and every such person shall sign the register and furnish therein the prescribed particulars regarding himself or herself.

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

(3) Any person who –

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

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

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

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

Section 41

Identification

41. (1) When so requested by an immigration officer or a police officer, any person shall identify himself or herself as a citizen, permanent resident or foreigner ~~when so requested by an immigration officer or a police officer,~~ and if on reasonable grounds such immigration officer or a police officer is not satisfied that such person is entitled to be in the Republic, such person may be interviewed by an immigration officer or a police officer about his or her identity or status, and such immigration officer or a police officer may take such person into custody without a warrant, and shall take reasonable steps, as may be prescribed, to assist the person in verifying his or her identity or status, and thereafter, if necessary detain him or her in ~~a prescribed manner and place until such person's prima facie status or citizenship is ascertained~~ terms of section 34.

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

Section 42

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, 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.

(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.

Section 43

Obligation of foreigners

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, visa or permanent residence permit, as the case may be, by the Department Director-General upon its issuance, extension or renewal, and that status shall expire upon the violation of those terms and conditions; and
- (b) depart upon expiry of his or her status.

Section 44

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~~ **Director-General** any illegal foreigner, or any person whose status or citizenship could not be ascertained, ~~advising through public notices or directly the person concerned of such reporting practice,~~ provided that such requirement shall not prevent the rendering of services to which illegal foreigners and foreigners are entitled under the Constitution or any law, ~~including the law of contract.~~

Section 45

Other institutions

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

Section 46

{The Amendment Act of 2011 repealed section 46, which read as follows:

“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.
- (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.
- (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.”}

Section 47

{The Amendment Act of 2004 repealed section 47, which read as follows:

“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 –*
- (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.*
- (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*
 - (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.”}*

Section 48

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

Section 49

Offences

49. (1) (a) Anyone who enters or remains in, or departs from the Republic in contravention of this Act, shall be guilty of an offence and liable on conviction to a fine or to imprisonment not exceeding three months two years.
- (b) Any illegal foreigner who fails to depart when so ordered by the Department Director-General, shall be guilty of an offence and liable on conviction to a fine or to imprisonment not exceeding nine months four years.

(2) Anyone who knowingly assists a person to enter or remain in, or depart from the Republic in contravention of this Act, shall be guilty of an offence and liable on conviction to a fine or to imprisonment not exceeding one year five years.

(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: 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 five 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 public 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 eight years without the option of a fine: Provided that if such civil public servant is employed by the Department, such offence shall be punishable by imprisonment not exceeding three 15 years without the option of a fine.

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

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

(8) Anyone who willfully 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 three years and shall be suspended from the relevant professional association for a period not exceeding two years.

(9) Anyone, other than a duly authorised civil public servant, who produces manufactures or provides or causes the manufacturing or provision of a document purporting to be a document issued or administered by the Department, shall be guilty of an offence and liable on conviction to a fine or to

imprisonment not exceeding two 10 years without the option of a fine.

(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 five years; 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 five years without the option of a fine.

(11) Anyone guilty of the offence contemplated in section 34(10) shall be liable on conviction to a fine or to imprisonment not exceeding six months three years.

(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 –

(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

(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.

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

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

(15) Any natural or juristic person, or a partnership, who-

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

(i) any permanent residence permit, port of entry visa, visa, certificate, written authority or other document which has been issued by lawful authority, or which, though issued by lawful authority, he, she or it is not entitled to use; or

(ii) any fabricated or falsified permanent residence permit, port of entry visa, visa, certificate, written authority or other document; or

(b) without sufficient cause has in his, her or its possession -

(i) any stamp or other instrument which is used or capable of being used for purposes of fabricating or falsifying or unlawfully recording on any document any endorsement under this Act or required to be submitted in terms of this Act;

(ii) any form officially printed for purposes of issuing any permanent residence permit, port of entry visa, visa, certificate, written authority or other document under this Act or required to be submitted in terms of this Act, or any reproduction or imitation of any such form;

(iii) any passport, travel document, identity document or other document used for the facilitation of movement across borders, which is blank or reflects particulars other than those of the person in whose possession it is found; or

(iv) any fabricated or falsified passport, travel document, identity document or other document used for the facilitation of movement across borders,

shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding four **15 years without the option of a fine.**

(16) Any person who –

(a) contravenes or fails to comply with any provision of this Act, if such contravention or failure is not elsewhere declared an offence, or if no penalty is prescribed in respect of an offence; or

(b) commits any other offence under this Act in respect of which no penalty is elsewhere prescribed,

shall be guilty of an offence and liable on conviction to a fine or to imprisonment not exceeding ~~two~~ **seven years.**

Section 50

Administrative offences

50. (1) Any foreigner who leaves the Republic after the expiry of his or her visa shall be liable to an administrative fine of a prescribed amount not exceeding R3000, which fine shall be imposed by the Director-General on detection of the overstay and exacted when such foreigner is admitted or makes an application with the Director-General **dealt with in terms of section 30(1)(h).**

(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.

(3) Any owner or ~~master of a ship~~ person in charge of a conveyance who through negligence contravenes the provisions of section 35(9), shall be liable to an administrative fine of a prescribed amount not exceeding R10 000, which fine shall be imposed by the ~~Department~~ Director-General.

(4) Any owner or person in charge of a conveyance who –
(a) fails to comply with the provisions of section 35(2)(a), (b) or (c) or (3)(a); or
(b) transmits inaccurate information contemplated in section 35(2)(b) or (3)(b),
shall be liable to an administrative fine of a prescribed amount, which fine shall be imposed by the Director-General.

SCHEDULE 1⁵³

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 2⁵⁴

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.

⁵³ This schedule was never amended and remains in its original form.

⁵⁴ This schedule was never amended and remains in its original form.