

DEPARTMENT OF HOME AFFAIRS

No. R. _____

_____ June 2005

IMMIGRATION ACT, 2002

IMMIGRATION REGULATIONS

The Minister of Home Affairs has under section 7 of the Immigration Act, 2002 (Act No. 13 of 2002), after consultation with the Immigration Advisory Board, made the regulations in the Schedule.

SCHEDULE

Definitions

1. In these Regulations, any word or expression to which a meaning has been assigned in the Act shall have the meaning so assigned and, unless the context otherwise indicates—

“asylum transit permit” means a permit contemplated in section 23 of the Act;

“business permit” means a permit contemplated in section 15 of the Act;

“corporate permit” means a permit contemplated in section 21 of the Act;

“crew permit” means a permit contemplated in section 16 of the Act;

“cross-border permit” means a permit contemplated in section 24(1) of the Act;

“deposit” means a cash deposit not exceeding the cost of a single ticket for the applicant to his or her country of origin: Provided that in the case of—

- (a) an illegal foreigner contemplated in section 34(1) of the Act, an additional amount not exceeding the cost of subsistence and travel costs and allowances for an escort in the event that such a service may be necessary, may also be required; or
- (b) an illegal foreigner contemplated in section 34(1) of the Act or a person contemplated in section 29(1) or 30(1) of the Act, the additional amount contemplated in paragraph (a), as well as a further additional amount not exceeding the expected detention and related costs in the event of the applicant becoming an illegal foreigner, may also be required.

“exchange permit” means a permit contemplated in section 22 of the Act;

“exceptional skills work permit” means a permit contemplated in section 19(4) of the Act;

“general work permit” means a permit contemplated in section 19(2) of the Act;

“intra-company transfer work permit” means a permit contemplated in section 19(5) of the Act;

“medical report” means a report by a medical practitioner with regard to an applicant’s general state of health, detailing any medical condition he or she suffers from, which report shall not be older than six months at the time of its submission;

“medical treatment permit” means a permit contemplated in section 17 of the Act;

“police clearance certificate” means a certificate issued by the police or security authority in each country where the relevant applicant resided for 12 months or longer since having attained the age of 18 years, in respect of criminal records or

the character of that applicant, which certificate shall not be older than six months at the time of its submission;

“proof of sufficient financial means” means proof by means of bank statements of or cash available to the applicant, including travellers’ cheques, or an undertaking supported by, where necessary, bank statements or salary advices by the hosts in the Republic accepting responsibility for the costs related to the maintenance and removal of the applicant, should this be necessary, and in the case of scholars or students, scholarships or bursaries, respectively;

“quota work permit” means the permit contemplated in section 19(1) of the Act;

“radiological report” means a report by a radiologist certifying that the applicant has been examined and that no signs of active pulmonary tuberculosis could be detected, which report shall not be older than six months at the time of its submission;

“relative’s permit” means a permit contemplated in section 18 of the Act;

“retired person permit” means a permit contemplated in section 20 of the Act;

“study permit” means a permit contemplated in section 13 of the Act;

“the Act” means the Immigration Act, 2002 (Act No.13 of 2002);

“transit permit” means a permit contemplated in section 24(2) of the Act;

“treaty permit” means a permit contemplated in section 14 of the Act;

“visitor’s permit” means a permit contemplated in section 11 of the Act;

“work permit” means the relevant permit contemplated in section 19 of the Act.

Passports

2. (1) A passport shall contain—
- (a) the full name, date and place of birth of the holder;
 - (b) a photograph clearly and correctly depicting the facial features of that holder;
 - (c) the name of the issuing authority;
 - (d) the date upon which and place where it was issued;
 - (e) at least one unused page when presenting the passport for purposes of endorsing a visa or a permit; and
 - (f) the expiry date thereof.
- (2) The international, regional and sub-regional organisations contemplated in paragraph (c) of the definition of “passport” in section 1(1) of the Act, are—
- (a) the United Nations, excluding its agencies, except for the United Nations Refugee Agency;
 - (b) the African Union, or its predecessor the Organisation for African Unity;
 - (c) the European Union;
 - (d) the Southern African Development Community; and
 - (e) the African Development Bank.

Permanent homosexual or heterosexual relationship

3. A permanent homosexual or heterosexual relationship contemplated in paragraph (b) of the definition of “spouse” in section 1(1) of the Act shall be a relationship proved by the parties—

- (a) in the case of a relationship between a foreigner and a citizen or permanent resident, irrespective of where the relationship was concluded, or between two foreigners where the relationship was concluded inside the Republic—
 - (i) by submitting an affidavit signed by both parties attesting—
 - (aa) to the exclusion of any other person to the spousal relationship; and
 - (bb) that neither of the parties is at the relevant time a partner to a marriage;
 - (ii) by proving a legal divorce or the death of a spouse in the event of a preceding marriage; and
 - (iii) by submitting documentation proving cohabitation and the extent to which the related financial responsibilities are shared by the parties; or
- (b) in the case of a relationship concluded between two foreigners in a foreign country, by submitting an official recognition thereof issued by the authorities of the relevant country, in addition to the documentation contemplated in paragraph (a)(i), (ii) and (iii).

Operations of Board

- 4. (1) The Board may appoint from its members *ad hoc* task teams to perform specific tasks for the Board.
- (2) The task teams contemplated in subregulation (1) shall report to the Board.

- (3) The Board shall meet at least quarterly or when the Minister or the Director-General so requests.
- (4) The Chairperson shall convene the Board.
- (5) The Board shall adopt rules to govern the procedure at its meetings.
- (6) A quorum at a meeting of the Board shall be 10 members.

Representations to Director-General or Minister

5. (1) The form contemplated in section 8(1) of the Act shall substantially correspond to Form 1 contained in Annexure A.
- (2) A decision contemplated in section 8(3) of the Act shall be communicated to the relevant person in writing in a form substantially corresponding to Form 2 contained in Annexure A.
- (3) The applications contemplated in section 8(4) and (6) of the Act shall be in the form of a written representation to the Director-General or the Minister, as the case may be.

Admission and departure

6. (1) An application for a certificate contemplated in section 9(3)(c)(i) of the Act shall be on a form substantially corresponding to Form 3 contained in Annexure A.
- (2) An examination contemplated in section 9(3)(e) of the Act shall take place when a person presents himself or herself to an immigration officer.
- (3) A person contemplated in subregulation (2) shall—
 - (a) satisfy the immigration officer that he or she—

- (i) is not an illegal foreigner by producing a valid passport and visa or permit;
 - (ii) is not a prohibited person by proving that he or she is in compliance with section 29 of the Act;
 - (iii) if previously declared an undesirable person, has complied with section 30(2) of the Act; or
 - (iv) is not in contravention of the Act by producing a permit commensurate with the activities to be undertaken by him or her in the Republic;
- (b) submit a contact address or an address of intended stay within the Republic, if required to do so;
- (c) provide proof of settlement, in the form of a receipt, of any outstanding administrative fine imposed under section 50(1) of the Act; and
- (d) submit to the immigration officer, if required to do so, a form containing the information which substantially corresponds to Form 4 or 5, as the case may be, contained in Annexure A.
- (4) Notwithstanding the fact that a form contemplated in subregulation (3)(d) has been completed by a person prior to his or her reporting to an immigration officer, the immigration officer concerned may require of that person to either complete the form once again, or to make a declaration containing the information substantially corresponding to Form 6 contained in Annexure A.
- (5) If a person is unable to complete the forms or declaration contemplated in subregulations (3) and (4) respectively, the immigration officer shall, if necessary,

question him or her with the assistance of an interpreter, complete the form or declaration or cause it to be completed, and require that person to sign that form or declaration or to affix his or her left thumb print thereto.

(6) An immigration officer who has not been satisfied as contemplated in subregulation (3)(a), may interview that person and shall record the general contents of that interview on a form that substantially corresponds to Form 7 contained in Annexure A.

(7) An immigration officer may require a foreigner seeking admission into the Republic to submit to an examination by a medical practitioner designated by the Director-General if there is reason to suspect that such person is infected with or the carrier of any of the diseases or viruses contemplated in regulation 24(1).

(8) The medical examination contemplated in subregulation (7) of a person who has arrived in the Republic on a conveyance, shall take place as soon as possible after the arrival of the conveyance, either on that conveyance, or at a place determined by an immigration officer.

(9) When examining a person before his or her departure from the Republic, an immigration officer shall ensure that that person is not—

(a) a fugitive from justice; or

(b) the subject of a court order that orders the Department to prevent his or her departure.

(10) An immigration officer who finds a person to be a person contemplated in subregulation (9)(a) or (b), shall refuse that person to depart.

Temporary residence permits

7. (1) An application for any temporary resident permit contemplated in sections 11 to 23 of the Act shall, subject to these Regulations, comply with the following general requirements:

(a) Submission of a duly completed application form substantially corresponding to Form 8 contained in Annexure A by—

(i) the applicant; or

(ii) an attorney, advocate or immigration practitioner holding a power of attorney,

which form shall be signed by the relevant applicant who shall, where necessary, be assisted by a legal guardian or curator;

(b) submission of a valid passport in respect of each applicant; and

(c) payment of the applicable application fee as determined in the regulations made under section 7(1)(i) of the Act.

(2) The documents contemplated in subregulation (1) shall be original or copies authenticated by the issuing authority of the country of origin and, if applicable, translated into one of the official languages of the Republic, which translation shall be certified as a correct translation by a sworn translator.

(3) An application made in a foreign country shall be submitted or mailed to—

(a) the mission of the Republic in the country of the applicant's normal residence, which includes permanent residence and long-term temporary residence;

(b) the mission of the Republic in the country of which the applicant holds a valid passport; or

- (c) any mission of the Republic that may from time to time be designated by the Director-General to receive applications in respect of an adjoining or nearby foreign country in which a mission of the Republic is not present.
- (4) An application made within the Republic shall be submitted or mailed to the designated office of the Department in the area in which the applicant intends to work or study or, in respect of any permit for purposes other than work or study, where he or she sojourns.
- (5) An applicant is not required to submit documentation that is already in the possession of the Department and which can be retrieved or copied from the records of the Department.
- (6) A foreigner who is in the Republic and applies for a change of status or conditions relating to his or her temporary residence permit, or for an extension of the period for which the permit was issued, shall submit his or her application at least 30 days prior to the date of expiry of that permit: Provided that—
- (a) in the case of a permit issued for less than 30 days ; or
 - (b) where such foreigner failed to comply with this subregulation,
- the application shall only be accepted within the validity period of the permit and upon the foreigner having demonstrated to the satisfaction of the Director-General that good cause exists for acceptance of the late application.
- (7) Any temporary residence permit contemplated in section 10 of the Act shall—
- (a) be entered in or affixed to the passport of the applicant or, in the case of an applicant already present in the Republic who has

provided proof that he or she has been unable to obtain a passport, on a document on which at least the applicant's full names, date of birth and passport number shall appear; and

(b) only be valid if an entry stamp has been affixed thereto at the port of entry or, in the case of a permit issued at an office of the Department within the Republic, the stamp of that office.

(8) The individual terms and conditions contemplated in section 10(5) of the Act with regard to a temporary residence permit shall relate to—

(a) limitations on the type of activities that may be undertaken in the Republic;

(b) the places where the activities contemplated in paragraph (a) may be undertaken;

(c) the submission of—

(i) outstanding documents, which had to accompany the application, within a specified period not exceeding six months; and

(ii) proof of sufficient financial means;

(d) payment of a deposit: Provided that such deposit shall be refunded to the depositor after the final departure of the applicant or after a permit contemplated in section 25 of the Act has been issued to the applicant: Provided further that the payment of the deposit may be effected by means of a bank guaranteed cheque or credit card at places where such facility exists; and

(e) limitations on the period of the visit or the validity of the permit.

- (9) An application contemplated in section 10(6) or (7) of the Act shall—
- (a) comply with subregulation (1), as well as the specific requirements applicable to the relevant temporary residence permit as determined in regulations 9 to 19;
 - (b) be made in the manner contemplated in subregulations (4), (5) and (6); and
 - (c) substantially correspond to Form 9 or 10, as the case may be, contained in Annexure A.

Visas and transit visas

8. (1) An application for a visa or transit visa shall substantially correspond to Form 11 contained in Annexure A and shall—
- (a) include a statement or documentation confirming the purpose and duration of the visit;
 - (b) be accompanied by—
 - (i) a valid passport in respect of each applicant; and
 - (ii) the applicable application fee as determined in the regulations made under section 7(1)(i) of the Act;
 - (c) include a yellow fever vaccination certificate if that person travelled or intends travelling from or through a yellow fever endemic area: Provided that the certificate shall not be required where that person travelled or intends travelling in direct transit through such area or where an application is made in the Republic;

- (d) in respect of minor dependent children accompanying the applicant to or joining the applicant in the Republic, be accompanied by—
 - (i) in the case of a minor subject to guardianship or custody, proof of such guardianship and custody; or
 - (ii) in the case of an unaccompanied minor, consent from the guardian;
- (e) be accompanied by proof of sufficient financial means; and
- (f) in the case of sojourn not exceeding 12 months, submission of proof of a valid return air ticket.

(2) A person who is unable to comply with the requirement in subregulation (1)(f) may be required to make a deposit: Provided that such deposit shall be refunded to the depositor after the final departure of the applicant or after a permit contemplated in section 25 of the Act has been issued to the applicant: Provided further that the payment of the deposit may be effected by means of a bank guaranteed cheque or credit card at places where such facility exists.

(3) In order to ensure that a person adheres to the conditions of his or her permit, the Minister may require that person to comply with subregulation (2), in addition to complying with subregulation (1)(e).

(4) An application contemplated in subregulation (1) shall be made in the manner contemplated in regulation 7(3): Provided that when good cause exists, a mission other than a mission referred to in regulation 7(3)(a) or (b) may accept that application, in which case that mission may, prior to consideration, refer the application to the mission contemplated in regulation 7(3)(a) or (b) for comment.

(5) The following types of visas may be issued in terms of section 10A of the Act:

- (a) A visitor's visa to a person who intends to visit the Republic for the purpose of obtaining a visitor's permit;
- (b) an official visa to a person who holds an official passport where that person—
 - (i) is a person contemplated in section 31(3)(b) of the Act; or
 - (ii) intends entering the Republic on an official visit;
- (c) a diplomatic visa to a person who holds a diplomatic passport where that person—
 - (i) is a person contemplated in section 31(3)(b) of the Act; or
 - (ii) intends entering the Republic on an official visit; and
- (d) a courtesy visa to a person contemplated in section 31(2)(a) of the Act.

Visitor's permit

9. (1) The financial or other guarantees contemplated in section 11(1)(b) of the Act in respect of departure are—

- (a) proof of sufficient financial means; and
- (b) a deposit or a valid return air ticket or both the deposit and the return air ticket: Provided that in the case of a deposit, such deposit shall be refunded to the depositor after the final departure of the applicant or after a permit contemplated in section 25 of the Act has been issued to the applicant: Provided further that the

payment of the deposit may be effected by means of a cash payment, bank guaranteed cheque or credit card at places where such facility exists.

(2) An applicant for a visitor's permit not exceeding a period of three months shall comply with the requirements contemplated in subregulation (1) and shall submit a statement or documentation confirming the purpose and duration of the visit.

(3) An applicant for a visitor's permit exceeding a period of three months shall, in addition to complying with subregulation (2), submit—

(a) either—

- (i) a marriage certificate in the case of a married applicant;
- (ii) proof of a relationship as contemplated in regulation 3;
- (iii) a death certificate in the case of a widowed applicant;
- (iv) a decree of divorce in the case of a divorced applicant; or
- (v) proof of legal separation in the case of a separated applicant;

(b) an affidavit, substantially corresponding to Form 12 contained in Annexure A, confirming any spousal relationship of the applicant and the particulars of any children born of such relationship;

(c) in respect of a minor dependent child accompanying him or her to or joining him or her in the Republic—

- (i) an unabridged birth certificate;
- (ii) in the case of an adopted minor, proof of that adoption;

- (iii) in the case of a minor subject to guardianship or custody, proof of such guardianship and custody; or
- (iv) in the case of an unaccompanied minor, consent from the guardian;
- (d) a police clearance certificate;
- (e) medical and radiological reports in respect of each applicant: Provided that a radiological report shall not be required in respect of children under the age of 12 years or pregnant women; and
- (f) a yellow fever vaccination certificate if that person travelled or intends travelling from or through a yellow fever endemic area: Provided that the certificate shall not be required where that person travelled or intends travelling in direct transit through such area or where an application is made in the Republic.

(4) The residence by a person who is the spouse or dependent child of the holder of a permit issued in terms of section 11, 13, 14, 15, 17, 19, or 22 with that permit holder shall, for the purposes of section 11(1) of the Act, be an activity contemplated in that provision.

(5) A person, other than a resident from a country with which the Republic shares a border, who is in possession of a permit issued on the basis of an exemption contemplated in section 10A(4) of the Act, shall upon his or her re-admission to the Republic be admitted on the same permit, and where such a permit has expired, may be admitted on a new permit valid for a period not exceeding seven days: Provided that where that foreigner arrives at a port of

entry from his or her country of residence, the new permit may be issued for a period not exceeding the period attached to the visa exemption.

(6) Where a visa is issued outside the Republic, that visa shall, upon admission, be considered to be a permit for the purposes of section 11 of the Act and the period of validity of that permit shall be calculated from the date of admission.

(7) The authorisation contemplated in section 11(2) of the Act—

- (a) shall be applied for by submitting a statement or documentation confirming the purpose and duration of the visit;
- (b) may be subjected to the relevant individual terms and conditions contemplated in regulation 7(8);
- (c) may, where applicable, be granted subject to a recommendation from the relevant organ of state; and
- (d) if approved, be endorsed on the visitor's permit:

Provided that in the case of a national of a country that is a member of the Southern African Development Community, the contents of paragraph (a) shall not apply.

Study permit

10. (1) An applicant for a study permit shall submit—

- (a) an official letter from the relevant institution confirming provisional acceptance at that institution and the duration of the course;
- (b) in the case of a person under the age of 21 years—

- (i) the particulars of the person in the Republic who will act as that learner's guardian and a confirmatory letter from that intended guardian; and
 - (ii) proof of consent for the intended stay from both parents or from the custodian parent, along with proof of sole custody in the latter case;
- (c) a police clearance certificate;
- (d) medical and radiological reports in respect of each applicant:
Provided that a radiological report shall not be required in respect of children under the age of 12 years or pregnant women;
- (e) the documents relating to his or her marital status contemplated in regulation 9(3)(a) and (b);
- (f) a yellow fever vaccination certificate if that person travelled or intends travelling from or through a yellow fever endemic area:
Provided that the certificate shall not be required where that person travelled or intends travelling in direct transit through such area or where an application is made in the Republic;
- (g) in the case of a foreign state accepting responsibility for the applicant in terms of a bilateral agreement, a written undertaking in respect of the departure of the applicant;
- (h) proof of medical cover with a medical scheme registered in terms of the Medical Schemes Act, 1998 (Act No. 131 of 1998), or other medical insurance cover recognised in the Republic;

- (i) the documents relating to minor dependent children accompanying the applicant to or joining the applicant in the Republic contemplated in regulation 9(3)(c);
 - (j) proof of sufficient financial means; and
 - (k) payment of a deposit: Provided that such deposit shall be refunded to the depositor after the final departure of the applicant or after a permit contemplated in section 25 of the Act has been issued to the applicant: Provided further that the payment of the deposit may be effected by means of a bank guaranteed cheque or credit card at places where such facility exists.
- (2) In the case of students from Africa, the payment of the deposit contemplated in subregulation (1)(k) shall not be required: Provided that the Government of the relevant African country submits a written undertaking to pay all costs relating to the deportation of the student, should this become necessary.
- (3) Subject to section 13(1) of the Act—
 - (a) permits issued for studies at higher education and training institutions shall not be valid for a longer period than the minimum duration of the course;
 - (b) permits issued for studies at schools shall not be valid for a period exceeding three years; and
 - (c) permits issued for studies at other recognised institutions of learning shall not be valid for a longer period than the duration of the course: Provided that it shall not exceed two years.

(4) The holder of a study permit for studies at a higher educational institution may conduct part-time work for a period not exceeding 20 hours per week.

Treaty permit

11. An applicant for a treaty permit shall—

- (a) submit a letter from the relevant organ of state involved in the agreement attesting to the—
 - (i) nature of the programme and the treaty under which it is conducted;
 - (ii) participation of the foreigner in the mentioned programme; and
 - (iii) type of activities the foreigner is expected to perform under the agreement and the duration of the project;
- (b) submit a police clearance certificate;
- (c) submit medical and radiological reports in respect of each applicant: Provided that a radiological report shall not be required in respect of children under the age of 12 years or pregnant women;
- (d) submit a written undertaking by the employer accepting responsibility for the costs related to the deportation of the applicant and his or her dependent family members, should it become necessary: Provided that where the employer is a Government Department of the Republic and is unable to submit the mentioned written undertaking, the sending State may submit that undertaking;

- (e) in the case of an applicant whose spouse and dependent children accompany him or her, submit the documents relating to marital status, the spousal affidavit or minor dependent children contemplated in regulation 9(3), as the case may be; and
- (f) submit a yellow fever vaccination certificate if he or she travelled or intends travelling from or through a yellow fever endemic area: Provided that the certificate shall not be required where that person travelled or intends travelling in direct transit through such area or where an application is made in the Republic.

Business permit

12. (1) Subject to subregulation (2), an application for a business permit shall be accompanied by a certificate issued by a chartered accountant registered with the South African Institute of Chartered Accountants to the effect that—

- (a) at least R2,5 million in cash;
- (b) a capital contribution of at least R2,5 million; or
- (c) at least R2 million in cash and a capital contribution of at least R500 000,

originating from abroad, is available to be invested as part of the book value of the business.

(2) In addition to subregulation (1), an applicant for a business permit shall submit—

- (a) a business plan outlining the feasibility of the business, both in the short and long term;
- (b) proof or an undertaking that at least five citizens or permanent residents shall be permanently employed;
- (c) an undertaking to register with the South African Revenue Service;
- (d) proof of registration with the relevant body, board or council, if applicable;
- (e) a police clearance certificate;
- (f) a yellow fever vaccination certificate if he or she travelled or intends travelling from or through a yellow fever endemic area: Provided that the certificate shall not be required where that person travelled or intends travelling in direct transit through such area or where an application is made in the Republic;
- (g) a deposit: Provided that such deposit shall be refunded to the depositor after the final departure of the applicant or after a permit contemplated in section 25 of the Act has been issued to the applicant: Provided further that the payment of the deposit may be effected by means of a bank guaranteed cheque or credit card at places where such facility exists;
- (h) medical and radiological reports in respect of each applicant: Provided that a radiological report shall not be required in respect of children under the age of 12 years or pregnant women;

- (i) in the case of a spouse accompanying him or her to or joining him or her in the Republic, the documentation contemplated in regulation 9(3)(a) and (b); and
 - (j) in the case of a minor child accompanying him or her or joining him or her in the Republic, the documentation contemplated in regulation 9(3)(c).
- (3) For the purposes of section 15(3) of the Act, the capitalisation requirement may be reduced or waived in respect of the following businesses:
 - (a) Information and Communication Technology;
 - (b) clothing and textile manufacturing;
 - (c) chemicals and bio-technology industry;
 - (d) agro-processing industry;
 - (e) metals and minerals refinement industry;
 - (f) automotive manufacturing industry;
 - (g) tourism industry; and
 - (h) crafts.
- (4) A foreigner who invests or has invested in an existing business shall, in addition to complying with subregulations (1), (2) and (3), submit financial statements of the business in respect of the preceding financial year.
- (5) A foreigner who invests or has invested in an existing business as a partner shall, in addition to complying with subregulations (1), (2) and (3), submit—
 - (a) financial statements in respect of the preceding financial year; and
 - (b) a partnership agreement.

Crew permit

13. (1) A crew permit may be issued for a maximum period of three months at a time.

(2) An applicant for a crew permit for officers or members of the crew of a public conveyance in transit in the Republic *en route* to or from that conveyance, shall submit—

- (a) a valid passport;
- (b) a letter of request from the owner, which shall include an undertaking of responsibility for such person's compliance with the Act; and
- (c) proof of settlement of any outstanding fine incurred by the conveyor under the Act.

(3) An applicant for a crew permit for the crew of a foreign private or foreign chartered conveyance while such conveyance is temporarily at a port of entry, shall—

- (a) submit a valid passport;
- (b) submit proof of sufficient financial means of the owner of that conveyance to cover day-to-day needs and medical expenses;
- (c) pay a deposit if deemed necessary by the Director-General in order to ensure compliance with the terms and conditions of the crew permit: Provided that such deposit shall be refunded to the depositor after the final departure of the applicant or after a permit contemplated in section 25 of the Act has been issued to the applicant: Provided further that the payment of the deposit may be

effected by means of a bank guaranteed cheque or credit card at places where such facility exists; and

- (d) submit proof of settlement of any outstanding fine incurred by the conveyer under the Act.

Medical treatment permit

14. (1) An applicant for a medical treatment permit shall—
- (a) submit a letter from his or her medical practitioner or medical institution indicating the reasons for and the period and details of the treatment in the Republic;
 - (b) provide the details of the person or institution responsible for the medical expenses and hospital fees: Provided that in a case where his or her medical scheme or employer is not liable for expenses incurred, proof of financial means or medical cover shall be submitted;
 - (c) provide the particulars of persons accompanying him or her;
 - (d) submit a valid return air ticket or deposit: Provided that in the case of a deposit, such deposit shall be refunded to the depositor after the final departure of the applicant: Provided further that the payment of the deposit may be effected by means of a bank guaranteed cheque or credit card at places where such facility exists;
 - (e) submit proof of sufficient financial means; and

- (f) submit a yellow fever vaccination certificate if he or she travelled or intends travelling from or through a yellow fever endemic area: Provided that the certificate shall not be required where that person travelled or intends travelling in direct transit through such area or where an application is made in the Republic.
- (2) A medical treatment permit may be issued for a maximum period of six months at a time.

Relative's permit

15. (1) An applicant for a relative's permit shall—
- (a) submit a police clearance certificate;
 - (b) submit medical and radiological reports in respect of each applicant: Provided that a radiological report shall not be required in respect of children under the age of 12 years or pregnant women;
 - (c) where the applicant is the spouse of a citizen or permanent resident, comply with regulation 9(3)(a) and (b);
 - (d) make a deposit, except in the case of a spouse or dependent minor child: Provided that such deposit shall be refunded to the depositor after the final departure of the applicant or after a permit contemplated in section 25 of the Act has been issued to the applicant: Provided further that the payment of the deposit may be effected by means of a bank guaranteed cheque or credit card at places where such facility exists; and

- (e) prove kinship between the applicant and the citizen or permanent resident contemplated in section 18(1) of the Act by submitting unabridged birth certificates.
- (2) A relative's permit may be issued for a maximum period of two years.
- (3) The financial assurance required in terms of section 18(1) of the Act shall be an amount of R5 000 per person per month to be proven by means of a salary advice or bank statement: Provided that the financial assurance shall not be applicable where the applicant is a spouse or dependent minor child.

Work permit

- 16.** (1) An applicant for a quota work permit, general work permit, exceptional skills permit and intra-company transfer work permit shall submit—
- (a) at the discretion of the Director-General, proof of a valid return air ticket, a deposit or a written undertaking by the employer accepting responsibility for the costs related to the deportation of the applicant and his or her dependent family members, should it become necessary, respectively: Provided that in the case of a deposit, such deposit shall be refunded to the depositor after the final departure of the applicant or after a permit contemplated in section 25 of the Act has been issued to the applicant: Provided further that the payment of the deposit may be effected by means of a bank guaranteed cheque or credit card at places where such facility exists;

- (b) a yellow fever vaccination certificate if he or she travelled or intends travelling from or through a yellow fever endemic area: Provided that the certificate shall not be required where that person travelled or intends travelling in direct transit through such area or where an application is made in the Republic;
 - (c) a police clearance certificate;
 - (d) medical and radiological reports in respect of each applicant: Provided a radiological report shall not be required in respect of children under the age of 12 years or pregnant women;
 - (e) the documentation relating to minor dependent children accompanying the applicant to or joining the applicant in the Republic contemplated in regulation 9(3)(c); and
 - (f) the documents relating to his or her marital status or spousal relationship contemplated in regulation 9(3)(a) and (b).
- (2) An application for a quota work permit shall be accompanied by—
- (a) confirmation that the foreigner possesses the necessary qualifications, as certified by the South African Qualifications Authority, and experience for the occupation; and
 - (b) proof that the applicant complies with the registration requirements of the relevant professional body, board or council.
- (3) Within 90 days of admission, the holder of a quota work permit shall submit to the Director-General confirmation of having secured employment within the category or class contemplated in section 19(1) of the Act and, within every

12 months thereafter, confirmation of continued employment within that category or class.

- (4) An application for a general work permit shall be accompanied by—
- (a) a contract of employment stipulating the conditions of employment and signed by both the employer and the applicant;
 - (b) proof of qualifications evaluated by the South African Qualifications Authority and translated by a sworn translator into one of the official languages of the Republic;
 - (c) proof of experience and skills in line with the job offer;
 - (d) a letter from the employer motivating why a citizen or permanent resident could not fill the position, as well as proof of efforts made to obtain the services of a citizen or resident, together with particulars of the unsuccessful candidates;
 - (e) proof of publication of an advertisement in the national printed media;
 - (f) an undertaking by the employer to inform the Director-General should the applicant not comply with the Act or leave the employer;
 - (g) if required by law, proof of registration with the relevant professional body, council or board;
 - (h) full particulars of the employer, including, if applicable, proof of registration of the business with the Registrar of Companies; and
 - (i) a certificate from the Department of Labour or an extract from the database of a salary benchmarking organisation stipulating the

average salary earned by employees occupying similar positions in the Republic.

(5) The advertisement contemplated in subregulation (4)(e) shall be an original clipping from the national printed media and shall—

- (a) reflect the full particulars of the relevant newspaper or magazine, as well as the dates on which the advertisement was published;
- (b) stipulate the minimum qualifications and experience required to fill the position;
- (c) clearly define the position offered and the duties to be performed;
- (d) measure at least 60 millimetres by 60 millimetres;
- (e) state the closing date for the application in the advertisement; and
- (f) not be older than three months at the time of application, which period shall be calculated from the closing date for applications.

(6) An application for an exceptional skills work permit shall be accompanied by—

- (a) a letter from a foreign or South African organ of state or from an established South African academic, cultural or business body, confirming the exceptional skills or qualifications of the applicant;
- (b) testimonials from previous employers and a comprehensive *curriculum vitae*;
- (c) other proof to substantiate exceptional skills or qualifications, such as publications and testimonials; and

- (d) a letter of motivation indicating that the exceptional skill possessed by the applicant will be to the benefit of the South African environment in which he or she intends to operate.
- (7) An exceptional skills work permit may be issued for a period not exceeding three years at a time.
- (8) An application for an intra-company transfer work permit shall be accompanied by—
 - (a) the foreigner's contract of employment with the company abroad;
and
 - (b) a letter from—
 - (i) the company abroad confirming that that foreigner shall be transferred to a branch of that company or an affiliated company situated in South Africa; and
 - (ii) the South African company confirming the transfer of the foreigner contemplated in subparagraph (i), as well as specifying the occupation and capacity in which that foreigner shall be employed.
- (9) In terms of section 19(5)(a) of the Act, the relevant employer shall ensure that—
 - (a) the passport of the foreigner is valid at all times;
 - (b) the foreigner is only employed in the specific position for which the permit has been issued; and
 - (c) the foreigner departs from the Republic on completion of his or her tour of duty.

Retired person permit

17. (1) An applicant for a retired person permit shall—
- (a) pay a deposit: Provided that such deposit shall be refunded to the depositor after the final departure of the applicant or after a permit contemplated in section 25 of the Act has been issued to the applicant: Provided further that the payment of the deposit may be effected by means of a bank guaranteed cheque or credit card at places where such facility exists;
 - (b) submit a yellow fever vaccination certificate if he or she travelled or intends travelling from or through a yellow fever endemic area: Provided that the certificate shall not be required where that person travelled or intends travelling in direct transit through such area or where an application is made in the Republic; and
 - (c) submit a police clearance certificate and medical and radiological reports: Provided that a radiological report shall not be required in respect of children under the age of 12 years or pregnant women.
- (2) The minimum payment to a foreigner contemplated in section 20(1)(a) of the Act shall be R20 000 per month.
- (3) The net worth contemplated in section 20(1)(b) of the Act shall be a combination of assets realising R20 000 per month.

Corporate permit

18. (1) An applicant for a corporate permit shall submit—

- (a) an application on a form substantially corresponding to Form 13 contained in Annexure A;
 - (b) proof of the need to employ the requested number of foreigners; and
 - (c) a job description and proposed remuneration in respect of each foreigner.
- (2) The Director-General may issue—
 - (a) a corporate permit to a corporate applicant on a form substantially corresponding to Form 14 contained in Annexure A; and
 - (b) an authorisation certificate to a corporate permit holder on a form substantially corresponding to Form 15 contained in Annexure A in respect of each corporate worker to be recruited by the holder of that permit.
- (3) In terms of section 21(2)(a)(i) of the Act, the relevant corporate applicant shall ensure that—
 - (a) the passport of the foreigner is valid at all times;
 - (b) the foreigner is employed only in the specific position for which the permit has been issued; and
 - (c) such foreigner departs from the Republic upon completion of his or her tour of duty.
- (4) In order to comply with subregulation (3)(c), a corporate applicant shall return the certificate contemplated in subregulation (2)(b) to the Director-General on completion of the corporate worker's tour of duty.

(5) The financial guarantees contemplated in section 21(2)(b) of the Act are, at the discretion of the Director-General—

- (a) a deposit in respect of each corporate worker: Provided that such deposit shall be refunded to the depositor after the final departure of the applicant or after a permit contemplated in section 25 of the Act has been issued to the applicant: Provided further that the payment of the deposit may be effected by means of a bank guaranteed cheque or credit card at places where such facility exists; or
- (b) a written undertaking *in lieu* of the deposit contemplated in paragraph (a).

(6) An application for a work permit to be issued to a person employed by the holder of a corporate permit shall comply with the following requirements:

- (a) In the case of a seasonal worker or a worker employed in terms of a bilateral agreement, as the case may be, or a seasonal worker not employed in terms of a bilateral agreement, the submission of—
 - (i) a valid passport in respect of each applicant;
 - (ii) a valid employment contract which has been entered into and, in the case of a bilateral agreement, attested to by the authorities in the applicant's country of origin;
 - (iii) a full set of fingerprints; and
 - (iv) the certificate contemplated in subregulation (2)(b); and
- (b) in all other cases, the submission of—
 - (i) a valid employment contract;

- (ii) the certificate contemplated in subregulation (2)(b);
- (iii) at the discretion of the Director-General, proof of a valid return air ticket, a deposit or a written undertaking by the employer accepting responsibility for the costs related to the deportation of the applicant and his or her dependent family members, should it become necessary, respectively: Provided that in the case of a deposit, such deposit shall be refunded to the depositor after the final departure of the applicant or after a permit contemplated in section 25 of the Act has been issued to the applicant: Provided further that the payment of the deposit may be effected by means of a bank guaranteed cheque or credit card at places where such facility exists;
- (iv) a yellow fever vaccination certificate if that person travelled or intends travelling from or through a yellow fever endemic area: Provided that the certificate shall not be required where that person travelled or intends travelling in direct transit through such area or where an application is made in the Republic;
- (v) a police clearance certificate;
- (vi) medical and radiological reports in respect of each applicant: Provided that a radiological report shall not be required in respect of children under the age of 12 years or pregnant women;

- (vii) the documentation relating to minor dependent children accompanying the applicant to or joining the applicant in the Republic contemplated in regulation 9(3)(c); and
 - (viii) the documents relating to his or her marital status or spousal relationship contemplated in regulation 9(3)(a) and (b).
- (7) A work permit issued to a person employed by the holder of a corporate permit shall—
- (a) in the case of a worker employed in terms of a bilateral agreement, be subject to the terms and conditions determined by the relevant agreement; and
 - (b) in the case of a seasonal worker, be limited to a maximum period of 12 months.

Exchange permit

- 19.** (1) An applicant applying for an exchange permit in terms of section 22(a) of the Act shall—
- (a) in the case of a learning institution in the Republic in conjunction with a foreign learning institution or an organ of a foreign state organising or administering the programme, submit a letter from—
 - (i) the Department of Education or a learning institution in the Republic confirming that it is responsible for organising or administering the existence of the programme, outlining the activities and duration thereof and accepting full

responsibility for the student while he or she is in the Republic; and

(ii) the organ or learning institution of the foreign state confirming the particulars of the student, the student's enrolment with a learning institution abroad, and the date on which the study shall commence; and

(b) in the case of an organ of state in conjunction with a foreign learning institution or an organ of a foreign state organising or administering the programme, submit a letter from—

(i) the organ of state confirming the existence of the exchange programme; or

(ii) the foreign learning institution confirming the enrolment of the applicant or a letter from the organ of the foreign state conducting the programme, as the case may be.

(2) An applicant who applies for an exchange permit in terms of section 22(a) or (b) of the Act, shall submit—

(a) at the discretion of the Director-General, proof of a valid return air ticket, a deposit or written undertaking by the employer accepting responsibility for the costs related to the deportation of the applicant and his or her dependent family members, should it become necessary, respectively: Provided that in the case of a deposit, such deposit shall be refunded to the depositor after the final departure of the applicant or after a permit contemplated in section 25 of the Act has been issued to the applicant: Provided further

that the payment of the deposit may be effected by means of a bank guaranteed cheque or credit card at places where such facility exists;

- (b) a yellow fever vaccination certificate if he or she travelled or intends travelling from or through a yellow fever endemic area: Provided that the certificate shall not be required where that person travelled or intends travelling in direct transit through such area or where an application is made in the Republic;
- (c) a police clearance certificate;
- (d) medical and radiological reports in respect of each applicant: Provided that a radiological report shall not be required in respect of children under the age of 12 years or pregnant women;
- (e) the documentation relating to minor dependent children accompanying the applicant to or joining the applicant in the Republic contemplated in regulation 9(3)(c); and
- (f) the documents relating to his or her marital status or spousal relationship contemplated in regulation 9(3)(a) and (b).

(3) An organ of state or a learning institution shall report to the Director-General as contemplated in section 22(a) of the Act on a form substantially corresponding to Form 16 contained in Annexure A and shall provide the information requested in that form.

(4) The period contemplated in section 22(a)(ii) of the Act shall be one year and shall apply to all cultural, economic and social exchange programmes.

Asylum transit permit

20. A person claiming to be an asylum seeker contemplated in section 23(1) of the Act shall apply for an asylum transit permit by completing a form substantially corresponding to Form 17 contained in Annexure A.

Cross-border permit

21. (1) If the Director-General has issued a cross-border permit as contemplated in section 24(1) of the Act to a person who regularly crosses the border at a port of entry, that person shall only be required to report to an immigration officer for examination upon the expiry of such permit.

(2) The period of validity of a cross-border permit shall not exceed six months at a time.

(3) An application for a cross-border permit shall be made in person to an immigration officer at the port of entry where the permit is required on a form substantially corresponding to Form 3 contained in Annexure A.

(4) An applicant for a cross-border permit shall submit—

(a) a valid passport; and

(b) in the case of a foreigner—

(i) a valid visa, if required;

(ii) a valid permit as contemplated in section 10 or 25 of the Act;

and

(iii) proof of the required status contemplated in section 24(1) of the Act in Botswana, Lesotho, Mozambique, Namibia, Swaziland or Zimbabwe.

(5) An immigration officer may at any time during a crossing require the holder of a cross-border permit to produce that permit.

(6) An immigration officer may, for good cause, withdraw a cross-border permit.

Permanent residence

22. (1) An application for a permanent residence permit contemplated in section 25(2) of the Act shall substantially correspond to Form 18 contained in Annexure A and shall be submitted by—

(a) the applicant; or

(b) an attorney, advocate or immigration practitioner holding a power of attorney,

which form shall be signed by the relevant applicant who shall, where necessary, be assisted by a legal guardian or curator.

(2) Where an applicant is represented as contemplated in subregulation (1)(b), that applicant shall avail himself or herself to be interviewed upon application.

(3) The application contemplated in subregulation (1) shall be accompanied by—

(a) the application fee as determined in the regulations made under section 7(1)(i) of the Act;

(b) a full set of fingerprints in respect of each applicant over the age of 18 years;

- (c) a yellow fever vaccination certificate if that person travelled or intends travelling from or through a yellow fever endemic area: Provided that the certificate shall not be required where that person travelled or intends travelling in direct transit through such area or where an application is made in the Republic;
 - (d) a police clearance certificate;
 - (e) medical and radiological reports in respect of each applicant: Provided that a radiological report shall not be required in respect of children under the age of 12 years or pregnant women;
 - (f) the documentation contemplated in regulation 9(3)(c) relating to minor dependent children accompanying the applicant or joining the applicant in the Republic;
 - (g) the documents relating to his or her marital status or spousal relationship contemplated in regulation 9(3)(a) and (b) respectively;
 - (h) an unabridged birth certificate in respect of each applicant;
 - (i) a deed poll in the case of an applicant who has changed his or her name, surname or gender; and
 - (j) where the application is made in the Republic, a valid temporary residence permit in respect of each applicant.
- (4) The documents contemplated in subregulation (3)(b), (c), (d), (e), (f), (g), (h), (i) and (j) shall be original or copies authenticated by the issuing authority of the country of origin and, if applicable, translated into one of the official languages of the Republic, which translation shall be certified as a correct translation by a sworn translator.

- (5) An application made in a foreign country shall be submitted or mailed to—
- (a) the mission of the Republic in the foreign country of the applicant's normal residence, which includes permanent residence and long-term temporary residence;
 - (b) the mission of the Republic in a foreign country of which the applicant holds a valid passport; or
 - (c) any mission of the Republic that may from time to time be designated by the Director-General to receive applications in respect of an adjoining or nearby foreign country in which a mission of the Republic is not present.
- (6) An application made within the Republic shall be submitted or mailed to the designated office of the Department in the area in which the applicant intends to work or, in respect of any permit for purposes other than work, where he or she intends to reside.
- (7) An applicant is not required to submit documentation that is already in the possession of the Department and which can be retrieved or copied from the records of the Department.
- (8) A foreigner contemplated in section 26(b) of the Act who has been issued with a permanent residence permit shall, after a period of two years since the issuing of that permit, inform the Director-General whether or not the good faith spousal relationship still exists by submitting to the Director-General an affidavit on a form substantially corresponding to Form 12 contained in Annexure A.
- (9) In the case of an application contemplated in section 25(2) of the Act in respect of a permit contemplated in sections 26(c) and (d) and 27(g) of the Act,

the citizen or permanent resident shall satisfy the Director-General that he or she is able and willing to support and maintain the foreign relative making the application.

Residence on other grounds

23. (1) The advertisement contemplated in section 27(a)(i) of the Act shall be an original clipping from the national printed media and shall—

- (a) reflect the full particulars of the relevant newspaper or magazine, as well as the dates on which the advertisement was published;
- (b) stipulate the minimum qualifications and experience required to fill the position;
- (c) clearly define the position offered and the responsibilities to be performed;
- (d) measure at least 60 millimetres by 60 millimetres;
- (e) state the closing date for the application in the advertisement; and
- (f) not be older than three months at the time of application, which period shall be calculated from the closing date for applications.

(2) The permanent residence permit contemplated in section 27(a) of the Act shall be issued on condition that the holder of that permit shall remain employed for a period of five years in the field in respect of which the offer of employment was made.

(3) The requirement contemplated in section 27(b) of the Act shall be the submission of—

- (a) a letter from a foreign or South African organ of state or from an established South African academic, cultural or business body, confirming the extraordinary skills or qualifications of the applicant;
- (b) testimonials from previous employers and a comprehensive *curriculum vitae*;
- (c) other proof to substantiate exceptional skills or qualifications, such as publications and testimonials; and
- (d) a letter of motivation indicating that the exceptional skill possessed by the applicant will be to the benefit of the South African environment in which the person intends to operate.

(4) An application for a permit contemplated in section 27(c) of the Act shall be accompanied by a certificate issued by a chartered accountant registered with the South African Institute of Chartered Accountants to the effect that—

- (a) at least R2,5 million in cash;
- (b) a capital contribution of at least R2,5 million; or
- (c) at least R2 million in cash and a capital contribution of at least R500 000,

originating from abroad, is available to be invested as part of the book value of the business.

(5) In addition to subregulation (4), an application for a permit contemplated in section 27(c) of the Act shall be accompanied by—

- (a) a business plan outlining the feasibility of the business, both in the short and long term;

- (b) proof or an undertaking that at least five citizens or permanent residents shall be permanently employed;
 - (c) an undertaking to register with the South African Revenue Service;
 - (d) proof of registration with the relevant body, board or council, if applicable;
 - (e) in the case of a spouse accompanying him or her to or joining him or her in the Republic, the documentation contemplated in regulation 9(3)(a) and (b); and
 - (f) in the case of a minor child accompanying him or her or joining him or her in the Republic, the documentation contemplated in regulation 9(3)(c).
- (6) For the purposes of section 27(c)(i) of the Act, a business in one of the following sectors is a business in the national interest:
- (a) Information and Communication Technology;
 - (b) clothing and textile manufacturing;
 - (c) chemicals and bio-technology industry;
 - (d) agro-processing industry;
 - (e) metals and minerals refinement industry;
 - (f) automotive manufacturing industry;
 - (g) tourism industry; and
 - (h) crafts.
- (7) A foreigner who invests or has invested in an existing business shall, subject to this regulation, submit financial statements of the business in respect of the preceding financial year.

(8) A foreigner who invests or has invested in an existing business as a partner shall, subject to this regulation, submit—

- (a) financial statements in respect of the preceding financial year; and
- (b) a partnership agreement.

(9) The requirements contemplated in section 27(d) of the Act shall be—

- (a) the submission of the certification contemplated in section 27(c) of the Refugees Act, 1998 (Act No. 130 of 1998);
- (b) where applicable, the submission of affidavits with regard to aliases used by the applicant and family members; and
- (c) the submission of the documentation contemplated in regulation 22(3)(b), (f), (g), (h) and (i): Provided that in the case of documents issued by the country from which he or she fled not being available, a sworn affidavit shall be submitted.

(10) The payment contemplated in section 27(e)(i) of the Act shall be R20 000 per month and the net worth contemplated in section 27(e)(ii) of the Act shall be a combination of assets realising R20 000 per month.

(11) The net worth contemplated in section 27(f) of the Act shall be R7,5 million, and the amount to be paid to the Director-General shall be R75 000, which amount has to be paid upon approval of the application.

(12) For the purposes of this regulation, “relative” means biological or judicially adopted children or adoptive parents and step parents.

Prohibited persons

24. (1) The diseases or viruses contemplated in section 29(1)(a) of the Act are those referred to in the regulations promulgated under the International Health Regulations Act, 1974 (Act No. 28 of 1974), and any other disease or virus rendering a person inadmissible as determined by the Department of Health by notice in the *Government Gazette*.

(2) An immigration officer who suspects a person reporting to him or her at a port of entry of being infected with a disease or virus contemplated in subregulation (1), shall refer that person to the port health officer to determine his or her admissibility.

(3) Where a port health officer is not present at a port of entry, a person contemplated in subregulation (2) shall be refused admission, unless a qualified medical practitioner certifies that such person is not infected with a disease contemplated in subregulation (1).

(4) If a prohibited person contemplated in section 29(1)(c) of the Act—

(a) has deposed to an affidavit illustrating to the satisfaction of the Director-General that he or she shall comply with the Act; and

(b) has been absent from the Republic for a minimum period of four years,

the Director-General may rehabilitate that person by granting him or her a status after having considered his or her application for a status.

(5) A person rehabilitated as contemplated in subregulation (4) shall not be exempt from visa requirements.

Undesirable persons

25. The Director-General may declare a foreigner who falls within a category listed in section 30(1) of the Act as undesirable on a form substantially corresponding to Form 19 contained in Annexure A.

Illegal foreigners

26. (1) Upon requesting authorisation as contemplated in section 32(1) of the Act, an illegal foreigner who has neither been arrested for the purpose of deportation nor ordered to depart and who wishes to apply for a status after the date of expiry of his or her permit, shall—

- (a) demonstrate to the satisfaction of the Director-General that he or she was unable to apply for such status for reasons beyond his or her control;
- (b) submit proof to the Director-General that he or she is in a position to submit his or her application for a status; and
- (c) if required to do so by the Director-General, pay a deposit: Provided such deposit shall be refunded to the depositor after the final departure of the applicant or after a permit contemplated in section 25 of the Act has been issued to the applicant: Provided further that the payment of the deposit may be effected by means of a bank guaranteed cheque or credit card at places where such facility exists.

(2) Authorisation to remain in the Republic as contemplated in section 32(1) of the Act shall be granted in a form substantially corresponding to Form 20 contained in Annexure A.

(3) As soon as the final decision in respect of the application for a status has been made, the authorisation contemplated in this regulation shall lapse.

(4) An illegal foreigner who has satisfied an immigration officer that he or she will depart from the Republic as required in section 32(1) of the Act, shall be ordered by that immigration officer on a form substantially corresponding to Form 21 contained in Annexure A to depart from the Republic within a period of 14 days of having so been ordered: Provided that such period may, for good cause, be extended.

Inspectorate

27. (1) In appointing immigration officers, the Director-General shall—

(a) in the case of individual appointments—

- (i) satisfy himself or herself that there is a need for such appointment;
- (ii) upon having satisfied himself or herself as to the need contemplated in subparagraph (i), furthermore satisfy himself or herself that the requirements contemplated in subregulation (2) have been complied with;
- (iii) determine the scope of the functions to be performed; and
- (iv) upon approval of the appointment, issue the appointment certificate; and

- (b) in the case of the appointment of categories of immigration officers, comply with the procedures contemplated in paragraph (a)(i) and (iii) and the requirement contemplated in subregulation (2)(a).
- (2) The requirements for the appointment of immigration officers as contemplated in section 33(2)(c)(ii) of the Act are that—
 - (a) the person has undergone the relevant training; and
 - (b) in the case of individual appointments, the person has successfully completed an examination following on the training contemplated in paragraph (a).
- (3) The Director-General may withdraw an appointment contemplated in subregulation (1) once the need for such appointment, as contemplated in paragraph (a)(i) of that subregulation, ceases to exist.
- (4) The notice contemplated in section 33(4)(b) of the Act shall be in a form substantially corresponding to Form 22 contained in Annexure A.
- (5) The notice contemplated in section 33(4)(c) of the Act shall be in a form substantially corresponding to Form 23 contained in Annexure A.
- (6) The warrants contemplated in section 33(5)(a) and (b), respectively, of the Act, shall be in a form substantially corresponding to Form 24 or 25 contained in Annexure A.
- (7) The receipt contemplated in section 33(5)(c) of the Act shall be in a form substantially corresponding to Form 26 contained in Annexure A, and the warrant contemplated in that section shall be in a form substantially corresponding to Form 27 contained in Annexure A.

Deportation and detention of illegal foreigners

28. (1) The detention and deportation of an illegal foreigner contemplated in section 34(1) of the Act shall be by means of a warrant issued by an immigration officer, which warrant shall substantially correspond to Form 28 contained in Annexure A.

(2) The notification of the deportation of an illegal foreigner contemplated in section 34(1)(a) of the Act shall be in a form substantially corresponding to Form 29 contained in Annexure A.

(3) The confirmation of deportation contemplated in section 34(1)(b) of the Act shall be on a form substantially corresponding to Form 30 contained in Annexure A.

(4) An immigration officer intending to apply for the extension of the detention period in terms of section 34(1)(d) of the Act shall—

(a) within 20 days following the arrest of the detainee, serve on that detainee a notification of his or her intention on a form substantially corresponding to Form 31 contained in Annexure A;

(b) afford the detainee the opportunity to make representations in this regard within three days of the notification contemplated in paragraph (a) having been served on him or her; and

(c) within 25 days following the arrest of the detainee, submit with the clerk of the court an application for the extension of the period of detention on a form substantially corresponding to Form 32 contained in Annexure A.

- (5) The minimum standards with regard to detention as contemplated in section 34(1)(e) of the Act are as determined in Annexure B.
- (6) A court may authorise the extension contemplated in subregulation (4)(c) on a form substantially corresponding to Form 32 contained in Annexure A.
- (7) The detention contemplated in section 34(2) of the Act shall be in a form substantially corresponding to Form 33 contained in Annexure A.
- (8) An immigration officer, when enforcing payment in terms of section 34(3) of the Act of a deposit, shall—
- (a) serve an order substantially corresponding to Form 34 contained in Annexure A on the illegal foreigner concerned to deposit the required amount; and
 - (b) if that deposit has not been paid, endorse the order contemplated in paragraph (a) to the effect that the deposit has not been paid and file a copy of that order with the clerk of the court of the district in which such illegal foreigner is detained pending his or her removal from the Republic.
- (9) The warrants contemplated in section 34(7) of the Act shall—
- (a) in respect of the removal of an illegal foreigner, be in a form substantially corresponding to Form 35 contained in Annexure A; or
 - (b) in respect of the release of an illegal foreigner, be in a form substantially corresponding to Form 36 contained in Annexure A.
- (10) A person contemplated in section 34(8) of the Act shall be notified that he or she is an illegal foreigner on a form substantially corresponding to Form 37 contained in Annexure A, and the declaration to the master of the ship

contemplated in that section shall be on a form substantially corresponding to Form 38 contained in Annexure A.

(11) The amount which the owner of a ship shall forfeit in terms of section 34(9)(a) and (d) of the Act shall not exceed R10 000.

Duties with regard to conveyances

29. (1) The list of passengers and the list of crew contemplated in section 35(3)(a) and (c) of the Act, respectively, the medical return contemplated in section 35(3)(d) of the Act and the exemption contemplated in the proviso to section 35(3) of the Act in the form of a coastal advice, shall be in a form substantially corresponding to Form 39 contained in Annexure A.

(2) The list of stowaways contemplated in section 35(3)(b) of the Act shall be in a form substantially corresponding to Form 40 contained in Annexure A.

(3) The limit contemplated in section 35(4) of the Act shall not exceed the total of the following amounts:

- (a) The cost of a single ticket for the deportation of the passenger to his or her country of origin;
- (b) the cost of a return ticket to the country of origin, subsistence and travel costs and allowances for an escort in the event that such a service may be required upon deportation; and
- (c) the detention and related costs pending the deportation of the passenger:

Provided that if a passenger contemplated in that section is a stowaway not declared on the list contemplated in section 35(3)(b) of the Act, an additional amount of R10 000 shall be forfeited to the State.

(4) The master or owner of a ship or an agent representing that master or owner, shall, prior to departure of that ship, complete and submit a form substantially corresponding to Form 41 contained in Annexure A.

(5) The certificate contemplated in section 35(6) of the Act shall be in a form substantially corresponding to Form 42 contained in Annexure A.

(6) A person conveyed as contemplated in section 35(8) of the Act shall be informed of his or her refusal of admission on a form substantially corresponding to Form 37 contained in Annexure A, and the person in charge of the conveyance shall be informed of his or her obligations in terms of that section on a form substantially corresponding to Form 38 contained in Annexure A.

Employment

30. An employer contemplated in section 38(4)(a) of the Act shall keep on record—

- (a) a certified copy of the passport of the foreigner reflecting his or her personal particulars;
- (b) a copy of the temporary or permanent residence permit of that foreigner;
- (c) proof of the capacity in which the foreigner was employed; and
- (d) a copy of his or her IRP 5 form or certificate of earnings and job description, respectively.

Keeping of registers of lodgers by certain persons

31. (1) The classes of premises contemplated in section 40(1) of the Act are—

- (a) hotels and motels;
- (b) boarding houses and lodges;
- (c) guest houses; and
- (d) apartment buildings.

(2) The register contemplated in section 40(1) of the Act shall—

- (a) be safeguarded by a duly authorised person for a period of six months; and
- (b) in respect of a lodger, contain—
 - (i) his or her full names and surname;
 - (ii) the number of his or her identification document or passport;
 - (iii) his or her residence status in the Republic;
 - (iv) his or her normal residential address; and
 - (v) his or her signature.

Identification

32. An immigration officer or police officer shall take the following steps in order to verify the identity and status of the person contemplated in section 41(1) of the Act:

- (a) Access relevant documents that may be readily available in this regard; or

- (b) contact relatives or other persons who could prove such identity and status; and
- (c) access departmental records in this regard.

Other institutions

33. (1) The institutions or persons contemplated in section 45 of the Act are—

- (a) banking and other financial institutions, including micro financiers;
- (b) estate agents and insurance brokers;
- (c) private hospitals and clinics; and
- (d) employment agencies.

(2) In ascertaining status or citizenship as contemplated in section 45 of the Act, the passport or identity document of the person shall be scrutinised by the institution or person referred to in subregulation (1) with a view to satisfying itself that, on the face of it, the passport or identity document, as the case may be, belongs to the person presenting it and, in the case of a foreigner, he or she is legally in the Republic.

(3) The commercial transactions contemplated in section 45 of the Act are—

- (a) in respect of subregulation (1)(a), the securing of loans and bonds, whether a housing loan secured by a mortgage bond over property or a loan secured by a special notarial bond over movable property, money transfers and the opening of bank accounts, excluding investment accounts;

- (b) in respect of subregulation (1)(b), facilitation of the purchase, sale or leasing of fixed property or the facilitation of the purchase of insurance policies of any nature;
- (c) in respect of subregulation (1)(c), when admitting or registering a patient; and
- (d) in respect of subregulation (1)(d), when assisting a foreign work-seeker.

Immigration practitioners

34. (1) An attorney, advocate or immigration practitioner representing a person as contemplated in section 46(1) of the Act shall submit to the Director-General or the Minister, as the case may be, a power of attorney on a form substantially corresponding to Form 43 contained in Annexure A.

(2) The application for registration contemplated in section 46(2) of the Act shall be on a form substantially corresponding to Form 44 contained in Annexure A.

(3) In order to qualify for registration on the roll of immigration practitioners maintained by the Director-General, a person shall—

- (a) be over the age of 21 years, unless legally married;
- (b) provide proof to the Director-General of his or her South African citizenship;
- (c) submit to the Director-General an affidavit to the effect that he or she is not a member of the immediate family of an official employed by the Department;

- (d) demonstrate to the Director-General his or her knowledge of the Act and these Regulations by successfully completing the examinations required by the Director-General;
 - (e) pay the relevant registration fee to the Department;
 - (f) commit himself or herself in writing to the Director-General that he or she shall comply with the Code of Conduct for immigration practitioners contemplated in Annexure C to be maintained by the Director-General; and
 - (g) submit a police clearance certificate.
- (4) The fee contemplated in subregulation (3)(e) shall be the fee as determined in the regulations made under section 7(1)(i) of the Act.

Administrative fines

- 35.** (1) The administrative fine contemplated in section 50(1) of the Act shall be—
- (a) R1 000 in respect of a foreigner who leaves the Republic within 30 days after the expiry of his or her permit;
 - (b) R1 500 in respect of a foreigner who leaves the Republic more than 30 days, but less than three months, after the expiry of his or her permit; and
 - (c) R3 000 in respect of a foreigner who leaves the Republic more than three months after the expiry of his or her permit.

- (2) A foreigner contemplated in section 50(1) of the Act shall be informed of the fine incurred on a form substantially corresponding to Form 45 contained in Annexure A.
- (3) The administrative fine contemplated in section 50(2) of the Act shall be R5 000 and the person shall be informed of the fine incurred on a form substantially corresponding to Form 46 contained in Annexure A.
- (4) The administrative fine contemplated in section 50(3) of the Act shall be—
- (a) in respect of a conveyance used in the course of a business to convey persons, R10 000 per person; and
 - (b) in respect of a conveyance used for any purpose other than the one contemplated in paragraph (a), R5 000 per person.
- (5) The owner or person contemplated in section 50(3) of the Act shall be informed of the fine contemplated in subregulation (3) on a form substantially corresponding to Form 47 contained in Annexure A.

Repeal

36. The Immigration Regulations published in Government Notice No. 487 of 21 February 2003 are hereby repealed.

Short title and commencement

37. These Regulations shall be called the Immigration Regulations and come into operation on 1 July 2005.

ANNEXURE B
MINIMUM STANDARDS OF DETENTION

[Section 34(1)(e); Regulation 28(5)]

1. Accommodation

- (a) Detainees shall be provided accommodation with adequate space, lighting, ventilation, sanitary installations and general health conditions and access to basic health facilities.
- (b) Every detainee shall be provided with a bed, mattress and at least one blanket.
- (c) Male and female detainees shall be kept separate from each other: Provided that this does not apply to spouses.
- (d) Detained minors shall be kept separate from adults and in accommodation appropriate to their age: Provided that minors shall not be kept separate from their parents or guardians: Provided further that unaccompanied minors shall not be detained.
- (e) Detainees of a specific age, or falling in separate health categories or security risk categories, shall be kept separate.
- (f) There may be a deviation from the above standards if so approved by the Director-General at a particular detention centre: Provided that such a deviation is for purposes of support services or medical treatment: Provided further that there shall not be any deviation in respect of sleeping accommodation.

2. Nutrition

- (a) Each detainee shall be provided with an adequate balanced diet.
- (b) The diet shall make provision for nutritional requirements of children, pregnant women and any other category of detainees whose physical condition requires a special diet.
- (c) The medical officer may order a variation in the prescribed diet for a detainee and the intervals at which the food is served, when such variation is required for medical reasons.
- (d) Food shall be well prepared and served at intervals not less than four and a half hours and not more than 14 hours between the evening meal and breakfast during a 24 hour period.
- (e) Clean drinking water shall be available at all times to every detainee.

3. Hygiene

- (a) Every detainee shall keep his or her person, clothing, bedding and room clean and tidy.
- (b) The Department shall provide the means to comply with item 3(a).

ANNEXURE C**CODE OF CONDUCT FOR IMMIGRATION PRACTITIONERS****[Section 46(1); Regulation 34(3)(f)]**

In terms of Regulation 34(3), in order to qualify for registration on the roll of immigration practitioners, a commitment shall be made in writing to the Director-General to comply with the Code of Conduct for immigration practitioners.

This Code of Conduct offers a minimum standard of ethical conduct, which should be extrapolated to guide conduct under all circumstances, and does not substitute any duty or obligation of a practitioner under common or statutory law.

Ensuring honesty and fairness

1. An immigration practitioner shall—
 - (a) be able and willing to deal fairly with clients;
 - (b) perform diligently and honestly;
 - (c) investigate the objective facts of a case to his or her satisfaction;
 - (d) refrain from making statements or encouraging the making of statements in support of an application, believing or knowing such statements to be misleading, inaccurate or false;
 - (e) be honest about the prospects of success when assessing a request for assistance, preparing a case or making an application;
 - (f) not encourage the lodging of applications which have no likelihood of success; and

- (g) ensure that a client has access to an interpreter where necessary.

Advertising

2. While an immigration practitioner may indicate registration on the roll of immigration practitioners, he or she shall ensure that his or her advertising—

- (a) is not false or misleading;
- (b) does not offer guarantees of success of an application; and
- (c) does not imply the existence of any special or privileged relationship with the Minister or officials of the Department.

Compliance with the law

3. An immigration practitioner shall—

- (a) always act in accordance with the Constitution, the law and the legitimate interests of a client;
- (b) know and understand the provisions of the Immigration Act and its Regulations; and
- (c) maintain a sound working knowledge of the relevant forms and procedures.

Upholding high business standards

4. An immigration practitioner shall—

- (a) abide by the standard of prudent office administration;
- (b) within a reasonable time after agreeing to represent a client, confirm the client's instructions in writing;

- (c) ascertain the fees charged by the Department for an application, as well as the method of payment, and inform the client accordingly;
- (d) inform the client of his or her entitlement to receive copies of the application and any related documents and provide such copies when so requested by the client;
- (e) keep the client fully and regularly informed in writing of the progress of each case or application undertaken for the client; and
- (f) within a reasonable time after the case or application has been finalised, inform the client in writing of the outcome.

Interaction with client

5. An immigration practitioner shall—

- (a) be accountable to his or her client;
- (b) always offer sound, timely, competent and comprehensive advice;
- (c) diligently and competently pursue the lawful interests of a client, failing which the practitioner may be subject to deregistration or professional liability;
- (d) be mindful of a client's dependence on the practitioner's knowledge and experience;
- (e) act in accordance with the client's instructions; and
- (f) preserve the confidentiality of any information acquired from the client due to the client-practitioner relationship.

Interaction with Department

6. An immigration practitioner shall—
- (a) respond to a request for information from the Department within such reasonable time as specified by the Department;
 - (b) subject to a client's instructions, provide sufficient relevant information to the Department to allow a full assessment of all the facts against the relevant criteria; and
 - (c) not submit applications under the Act or Regulations without the required supporting documentation.

Intimidation and coercion

7. No immigration practitioner shall—
- (a) intimidate, coerce unduly pressurise, threat or manipulate any person; or
 - (b) unreasonably withhold from any client documents belonging to him or her and, when so requested by the client, the practitioner shall return to the client all documentation relevant to the case or application.

Termination of representation

8. A practitioner shall complete the work as instructed by the client, unless the—
- (a) practitioner and client agree otherwise;
 - (b) client terminates the practitioner's instructions; or

- (c) practitioner terminates the agreement for just cause and gives reasonable written notice to the client.

Fees and disbursements

- 9. An immigration practitioner shall—
 - (a) limit fees to what is reasonable under the circumstances of the case;
 - (b) at the commencement of services, provide the client with a statement outlining the fee charged by the Department for processing an application, any cash deposit that may be required by the Department, any applicable disbursements and the fee charged by the practitioner for services to be rendered;
 - (c) advise the client on the method of payment of fees and seek authorisation from the client prior to incurring disbursements, such as translation fees;
 - (d) charge a reasonable fee for copies of the application and any related documents that are made available to the client, which fee may be waived; and
 - (e) in the case where a client fails to pay the due and payable practitioner's fees, give the client written notice of intention to suspend services and at least seven days to make payment before suspending services.

This Code of Conduct should be displayed prominently in the practitioner's office.

If a client has reason to believe that an immigration practitioner has acted in breach of this Code of Conduct, a complaint may be made in writing to—

**THE DIRECTOR-GENERAL
DEPARTMENT OF HOME AFFAIRS
PRIVATE BAG X114
PRETORIA
0001**