

Act prior to any  
amendments

# Government Gazette Izwelelithi Yehulumende

REPUBLIC OF SOUTH AFRICA  
IRIPHABLIKI YENINGIZIMU AFRIKA

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## THE PRESIDENCY

No. 766 31 May 2002

It is hereby notified that the President has assented to the following Act, which is hereby published for general information:—

No. 13 of 2002: Immigration Act, 2002.



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

### Undesirable persons

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

- (a) anyone who is or is likely to become a public charge;
- (b) anyone identified as such by the *Minister* after consultation with the *Board*, or in the case of urgency, by the *Minister* who, in such cases, shall inform the *Board* as soon as practicable;
- (c) anyone who has been judicially declared incompetent; 10
- (d) an unrehabilitated insolvent;
- (e) anyone who has been ordered to *depart* in terms of *this Act*;
- (f) anyone who is a fugitive from justice; and
- (g) anyone with previous criminal convictions without the option of a fine for conduct which would be an offence in the *Republic*, with the exclusion of certain *prescribed* offences. 15

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

### Exemptions 20

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

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

(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 and sojourn in the *Republic* for a period not exceeding six months, provided that such *foreigners* do not intend to reside in the *Republic* permanently; 30
- (b) grant a *foreigner* or a category of *foreigners* the rights of permanent residence for a specified or unspecified period when special circumstances exist which justify such a decision; provided that the *Minister* may— 35
  - (i) exclude one or more identified *foreigners* from such categories; and
  - (ii) for good cause, withdraw such right from a *foreigner* or a category of *foreigners*;
- (c) authorise any person or category of persons to enter the *Republic* at a place other than a *port of entry*, in which case the *Department* shall issue to such person(s) the *prescribed* written permission or *passport* endorsement, provided that such authorisation may be withdrawn at any time by the *Minister*; and 40

- (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.

#### Administrative offences

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

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

### TRANSITIONAL PROVISIONS

#### Transitional definitions

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

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

#### Functions of *Department* and *Board*

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

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

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

#### Existing Permits

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

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

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