

20 January 2011

Mr Eddy Mathonsi
Committee Secretary
By e-mail: emathonsi@parliament.gov.za

Dear Sir

SUBMISSION TO THE PORTFOLIO COMMITTEE ON HOME AFFAIRS REGARDING THE IMMIGRATION AMENDMENT BILL [B32-2010]

Deloitte is grateful for the invitation to make a written submission on the abovementioned matter.

We wish to make the following submission:

I. GENERAL ISSUES

1. Overall it seems this bill seeks to change matters for the better.
2. Concerns exist around the viability of certain clauses; has the Department done enough strategic planning to guarantee that they would be able to administer each and every item they suggest change on? A law drafted by the legislature must be sound on paper but most of all, be honoured to the full extent, by the executive body of State.

II. SPECIFIC ISSUES

1. Clause 3(a) – Immigration Board

It is encouraging that an attempt is made to ensure that this Board could actually function. The reduced quorum will enable the board to respond faster to issues at hand.

A potentially negative consequence of the clause's current drafting is that the Minister will be granted fairly wide powers to appoint some members of the Board, which could result in unfairness if the process is not managed transparently.

2. Clause 7(c) – Lodgement in South Africa (s10 of principle Act)

The amendment suggests that only in “exceptional circumstances” will the status or conditions of a permit or visa be changed.

The Bill does not define “exceptional circumstances”. This would leave the determination of this clause open to legal battles and potentially, a lot of time and money wasted and lost. We are concerned that the officials are not properly trained within the framework of what constitutes an administratively fair and just decision that needs to be taken on each application against the backdrop of our constitutional and administrative law framework. The clause may inadvertently result in only travellers with access to specialised immigration lawyers, who can argue these highly technical arguments on their behalf, being able to meet this requirement.

From a practical perspective, we are certain that at this stage there is no chance of this being administered fairly. The reason for this is that there simply is not enough man power to do so. As matters stand, the appeals procedure takes over a year to complete and we would expect a similar timeframe and procedure to be required by this clause..

The section also fails to provide clear guidance on the procedure to be followed regarding renewals of permits. We strongly suggest that clear and fair guidance in this regard is written into the law.

3. Clause 11 – Business

Under the current system, any person wishing to open a business in South Africa may apply for a business permit. The amendment will in future allow only individuals who qualify in terms of a regulated list determined by the Minister to apply for a business visa. This will have the benefit of protecting small and emerging businesses in South Africa from foreign control of the local market. The deletion of subsection (3) – waivers of applicant’s financial contribution - is also likely to have a positive impact by promoting investment and employment in South Africa.

One concern is the lack of indication of the types of businesses that will be defined as in the national interest. We suggest that a transparent process will emerge when determining businesses in the ‘national interest’.

4. Clause 12 – Work Permit Categories

The changes to this section aim to simplify the work permit procedure, by suggesting the deletion of the quota permit; and deletion of the onus on the general work permit and quota permit holders to do the annual notification, and making changes to the special skills permit and the intra company transfer permit requirements and durations.

It is very refreshing to see that the 2 year limitation on the intra company transfer was removed and we would strongly suggest that a fair period for this would be in the region of 4 years at a time.

As we do not have regulations to test these requirements and periods, it is difficult to say whether or not these are actually simplifying the process or not. However, removing

certain requirements from the act makes it easier to approach for waivers, as only requirements mentioned in the regulations are subject to a request for waivers.

If these regulations are done properly we can expect a more simple work permit application procedure with no confusion. However, grave concern still rests on the turnaround times due to staff shortages, no matter how simple the procedures are.

5. Clause 13 – Corporate Work Permit

As the Act currently stands, corporate permits may be issued to any industry without vetting by the Department. We strongly support The Bill suggesting that only designated industries may in future apply for the permit. The effect of this change should bring reduction in access to cheap labour by tawdry industries.

Again, we would need to see transparent methodology when it comes to determining which sectors will qualify to apply for corporate permits.

Of most concern is the lack of workable transitional arrangements. The Bill fails to properly provide for a review of section 53 of the Act (transitional arrangements for existing permits).

It is our opinion that section 53 does not equip the Department to legally assist with a formal transition strategy as section 53 refers to permits issued under the “previous Act”. The previous Act is at present still interpreted (in terms of section 51) as the Aliens Control Act of 1991.

6. Clause 24 – Duties

Severe and Excessive penalties for companies contravening the legislation, we find the harshness of the sentences unacceptable.

Thank you once again for the opportunity to offer our opinion and applaud and support any positive change that the Department wishes to establish.

Yours sincerely

SENT ELECTRONICALLY

Lino De Ponte
Partner