NOTICE .... OF 2003

DEPARTMENT OF HOME AFFAIRS
Immigration Act, 2002 (Act No. 13 of 2002)

Immigration Regulations

The Minister of Home Affairs has, in terms of section 7(1) of the Immigration Act, 2002 (Act No. 13 of 2002), made the Regulations hereunder. Endnotes are in terms of section 7(1)(c) of the Immigration Act, 2002 and are not part of the Immigration Regulations.

M G BUTHELEZI
MINISTER OF HOME AFFAIRS

Contents of Regulations

Regulation 1
Definitions

(1) In these Regulations, unless the context indicates otherwise,

(a) the definitions set out in section 1 of the Act shall apply within these Regulations;

(b) "days", means calendar days;

(c) “Department” means the Department as defined in the Act, taking into account, where applicable, sub-regulation 14(3) and (4) in respect of the functioning and structure of the Department for purposes of the Act and these Regulations;

(d) “examination” means an investigation as contemplated in sub-regulation 10(3);

(e) “extension” as referred to a permit means the lengthening for good cause of the force and effect of a permit on the basis of a written and motivated request of the permit holder, or, as the

case may be, the extension of such force and effect in respect of another person in terms of the Act and these Regulations.[1]

(f) **"**good cause**"** means a balanced relation between the circumstances of the case and the action to be taken, in which the action is justified, equitable and consonant with the objectives of the Act;

(g) "mission" means a representative office of the Republic outside the Republic;

(h) "notarial contract" means

(i) a contract analogous to the one contemplated in the Matrimonial Property Act 1984 (Act 88 of 1984) attested by a notary public, in which the parties set out their mutual financial relationship as they wish but without derogating from the financial obligations set out in Annexure 1, or

(ii) a document executed under the laws of a foreign country which, in the discretion of the Department, has substantially the same value or effects as the one contemplated under (i)..

(i) "Region" means a structure of the Department referred to in sub-regulation 14(3);

(j) "Regional Director" means the person appointed by the Minister to be in charge of a Region[2];

(k) "renewal" as referred to permit means the issuance of a new permit on the basis of the applicant's showing that he, she or it continues to qualify for such permit in terms of the Act and these Regulations;

(l) "the Act" means the Immigration Act, 2002 (Act 13 of 2002); and

(m) "these Regulations" means these regulations and includes the Schedules and Annexure thereto, provided that in case of any inconsistency, these regulations and its Schedules shall prevail over its Annexure.[3]

(2) Subject to the Act, these Regulations and the definitions set out herein, *inter alia*, regulate the implementation of the Act.

Regulation 2
Applications

(1) The application referred to in section 1(1)(ii) of the Act shall, in respect of each category listed in column 2 of Schedule A, be in the form of and substantially contain the information set out in the corresponding Annexure listed in column 3 of Schedule A.

(2) The documentation and information referred to in section 1(1)(ii) of the Act shall, in respect of each category listed in column 2 of Schedule A, be set out in column 4 of Schedule A, provided that in addition the Department may require any applicant to submit a full set of fingerprints.

(3) A permit, or other document applied for, referred to in column 2 of Schedule A, shall be in the form of and substantially contain the information set out in the corresponding Annexure contemplated in column 5 of Schedule A.

(4) The terms and conditions that may be imposed in respect of each permit or document listed in column 2 of Schedule A are those set out in column 6 of Schedule A.

(5) An application listed in column 2 of Schedule A shall be lodged at the corresponding place listed in column 7 of Schedule A.

(6) Any source document that accompanies an application shall be

(i) an original,

(ii) a certified copy of the original,

(iii) an authenticated replacement document, or

(iv) a certified copy of an authenticated replacement document

and shall, if applicable, be translated into one of the Republic's official languages, which translation shall be certified as a correct translation by a sworn translator, provided that in the case of a visa application these requirements may be waived.

(7) Where an application is to be submitted in a foreign country, it shall be handed or mailed by registered mail to:

(a) the mission in the foreign country of the applicant's normal residence, which includes permanent residence and long-term temporary residence, or that in a foreign country of which the applicant validly holds a valid passport; or

(b) such mission as 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 is not present

provided that when good cause exists a mission other than the one referred to in paragraphs (a) and (b), has the discretion, but not the duty, to accept an application submitted to it, in which case such mission may prior to consideration, refer the application to the mission envisaged in paragraph (a) or (b) for comment.

(8) An application to be lodged within the Republic, shall be handed or mailed by registered mail to the Regional Director 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 or intends to sojourn[4], and receipt of such an application shall be handed or mailed by such Regional Director to the applicant or his or her representative.

(9) An application for status does not provide a status and does not entitle the applicant to any benefits under the Act, except for those explicitly set out in the Act, nor to sojourn in the Republic pending the Department's decision in respect thereof.[5]

(10) The Department shall endeavour to finalise a decision flowing from a change of status within thirty days of its receiving a complete application, except when the applicant requests the Department to verify facts which, in terms of the Act or these Regulations, could form the object of a chartered accountant's certification[6].

(11) When an applicant submits to the Department that a document required by his or her application is not available or could only be acquired or produced with undue hardship, the requirement of such document may be waived by the Regional Director concerned when

(a) the information to be supplied by means of such document is proven by the applicant by means of his or her affidavit and the aforesaid non-availability or hardship in respect of such document is corroborated and explained by a representative of the foreign state concerned or by the foreign state where the applicant resides; or

(b) the relevant Regional Director is satisfied that there is good cause to waive it.

(12) The Department may not impose any additional requirement of documentation, information, reports or consultative steps with other organs of State or entities or person or other application requirements beyond what is provided for in the Act and these Regulations.[7]

(13) Applications in writing must be signed by

(a) the relevant applicant assisted by legal guardian or curator where applicable, and, if the applicant so wishes,

(b) an attorney, advocate or immigration practitioner, provided that a power of attorney is provided therewith,[8]

and may be submitted through and handled or followed by an attorney, advocate or immigration practitioner provided with a power of attorney.

(14) Without undue delay, the Department shall

(a) process an application; or

(b) inform the applicant when it cannot do so because additional information or action is required on the side of the applicant or for other reason.[9]

(15) An applicant does not need to submit documentation which is already in the possession of the Department and may be retrieved and/or copied from the Department's records, provided that when the Department is required to retrieve information in its possession, any deadline set out in these Regulations may be reasonably postponed.

(16) For good cause, the Department may issue a permit on condition that documentation required by the Act or these Regulations be supplied after the issuance of such permit as determined by the Department or as contemplated in these Regulations, in which case such permit shall lapse if the permit holder fails to produce such documentation within the applicable deadline and after the Department has given such permit holder 10 days to correct such failure.

Regulation 3
Customary union

For purposes of section 1(1)(ix) of the Act, a customary union shall only be recognised and documented,

(1) in terms of the provisions of the Recognition of Customary Marriages Act, 1998 (Act No 120 of 1998);
(2) in the case of a relationship established in a foreign country, where it is substantiated by an official certificate issued, or endorsed for authenticity by the consular officer of that foreign country in the Republic, failing which by the issuing authority, stating that
    (a) a customary union is legally recognised in that foreign country and has the characteristics of an intended permanent relationship which calls for cohabitation and mutual financial and emotional support;
    (b) the relationship of the persons concerned falls within the scope of jurisdiction of that foreign country; and
    (c) having satisfied all relevant legal or factual requirements, the persons concerned are in a customary union; or
(3) in the case of relationships established in the foreign countries listed in part 1 of Schedule H, the relationships cited in the corresponding second column shall be proven as stated therein, provided that for good cause a party to a relationship contemplated in this sub-regulation may invoke the procedure set out under sub-regulation (2)[10]

provided that in any case it is shown that such customary union was in existence at a time no more removed than six months prior to the submission of the application

Regulation 4
Appointment of immigration officers

(1) An officer of the Department shall be an "immigration officer" if appointed as such by the Director-General or a Regional Director subject to the power of the Director-General to revoke with immediate effect any appointment made by a Regional Director.
(2) An appointment envisaged in sub-regulation (1)
    (a) may be for all or for some of the powers or functions vested in an officer or an immigration officer in terms of the Act and shall be subject to the person concerned having been successfully tested on his or her knowledge of the Act and these Regulations and other relevant legislation in terms of a curriculum approved by the Minister after consultation with Board, if any; and
    (b) may be of an individual or a category; provided that in the case of an individual the appointment shall be confirmed by an appointment certificate.
(3) Persons or categories of persons who are not officers of the Department shall only be appointed as immigration officers if their appointment is necessary for the execution of the Act, provided that such appointments shall comply with sub-regulation (2) supra.[11]
(4) Any legal person appointed as an immigration officer shall be duly contracted through public tender and held accountable to one or more Regional Directors and/or the Director-General and shall be subject to any contract and other conditions which the Department may determine from time to time.

Regulation 5
Marriage[12]

The legally sanctioned conjugal relationship under the law of a foreign country referred to in section 1(1)(xxi) of the Act, other than a customary union or a life partnership, shall be deemed to be a marriage only if

(1) proven by the documentation of the relevant foreign country as set out in part 2 of Schedule H, provided that such documentation shows that such a relationship was in existence at a time no more removed than six months prior to the submission of such documentation to the Department; or
(2) in respect of countries other than those listed in part 2 of Schedule H, substantiated by an official certificate issued, or endorsed for authenticity, by the consular officer of that foreign country in the Republic, failing which by the issuing authority, showing that such relationship subsisted less than six months prior to the submission of such documentation to the Department;

provided that the benefits of such spousal relationship in terms of the Act shall be extended to one spouse only.

Regulation 6
Passports

(1) A "passport" shall include a valid passport, emergency passport, emergency travel certificate, temporary

passport, document for travel purposes, travel document and laissez-passer, including the United Nations Convention travel document issued to refugees in terms of the United Nations 1951 Convention Relating to the Status of Refugees.[13]

(2) The passport or other document referred to in sub-regulation (1) shall contain the following information and characteristics:
   (a) the full name, date and place of birth of the bearer;
   (b) a photograph clearly depicting his or her facial features;
   (c) the name of the issuing authority;
   (d) the date and place of issuance and the date of expiry;
   (e) at least one unused page dedicated to endorsements when presenting the passport for endorsements; and
   (f) if issued to a non-citizen of the issuing country, the document may not in any manner limit the holder's re-admission to the country of issuance.

(3) Valid documents issued by the following international, regional and sub-regional organisations recognised by the Government of the Republic shall be regarded as passports for the purpose of the Act when issued to a person who is not a citizen:
   (a) The main laissez-passer of the United Nations, excluding the travel documents issued by the agencies of the United Nations[14];
   (b) the laissez-passer of the African Union, or its predecessor, the Organisation for African Unity;
   (c) the laissez-passer of the European Union issued to its officers on official duty;
   (d) the laissez-passer of the Southern African Development Community; and
   (e) the laissez-passer of the African Development Bank.

(4) A person seeking admission by means of the document envisaged in section 1(1)(xxvi)(d) of the Act shall not proceed to a port of entry before having obtained approval to report there from the Director-General under such conditions as may be relevant for the implementation of the Act.

Regulation 7
Ports of Entry

(1) The ports of entry referred to in section 1(1)(xxvii) of the Act are the areas dedicated to the clearance of people or goods accompanying people entering and exiting the Republic within a place listed in Schedule B to these Regulations.

(2) The Director-General shall determine the hours of attendance of immigration officers at these ports of entry, provided that different times may be determined for different ports of entry[15].

(3) A notice stating the hours determined in sub-regulation (2) shall be posted at each port of entry in a place visible to the public.

(4) When a person calls at a port of entry for the purpose of admission to or departure from the Republic outside the official hours determined in terms of sub-regulation (2) he or she shall be liable to pay an overtime fee calculated at the following rate:
   (a) R100-00 per each hour or part thereof for each immigration officer who has to render such overtime services, when such person informed the immigration officer in control of the port of entry concerned, beforehand during the official hours of that port of entry, of the date and time of the intended call at that port of entry, and call at the port of entry concerned within the hours and the date so arranged; or
   (b) R200-00 per each hour or part thereof in respect of each immigration officer who has to render such overtime services in all other cases.

Regulation 8
Other conveyance

The prescribed conveyance envisaged in section 1(1)(xxxv) of the Act shall, to the reasonable and practical extent, be all other conveyances in respect of persons entering, seeking to enter or who have entered the Republic by means of such conveyances or on foot.[16]

Regulation 9
Spousal affidavit

The affidavit required in section 1(1)(xxxvi) of the Act for a spouse who is a party to a permanent homosexual or heterosexual relationship shall prove a relationship with the features stated in such section of the Act and shall

(a) attest to the exclusion of any other person from the spousal relationship; and

(b) attest that both parties have never been married; or

(c) having been married, submit proof of legal divorce or decease of spouse

and shall be in the form of and contain the information set out in Annexure 1.[17]

Regulation 10
Visa and Examination

(1) A visa or a transit visa, as the case may be, contemplated in sections 1(1)(xlii) and 24(2) of the Act shall
  (a) be in the form and substantially contain the information set out in Annexure 3; and
  (b) comply with the requirements set out under items 1 and 33 of Schedule A, provided that the fee referred to in paragraph (b) of column 4 shall only be applicable to the nationals of countries listed in Schedule D.

(2) The provisions set out in Schedule C shall determine the foreigners who do not require a visa in order to report for an examination at a port of entry and the conditions of such exemption[18], provided that
  (a) a foreigner who, in terms of these Regulations, would require a visa may report for an examination and, upon successful examination and the payment of a R850 fee[19], may be admitted without a visa if he or she makes a deposit of R14 000-00[20] in cash, money order, bank transfer, certified cheque or by charge on a major credit card, which deposit shall be returned upon his or her departure or thereafter at a mission, or forfeited in case of his or her failure to depart on time or breach of the terms and conditions of his or her status; and
  (b) the foreigner referred to in paragraph (a) may not avail himself or herself of the option set out in paragraph (a) whenever the Department or the relevant immigration officer has reason to believe that his or her entry without a visa may not be in the interest of the Republic or conducive to the proper administration of the Act and the fulfilment of its objectives.

(3) The examination of a foreigner in terms of sections 1(1)(xlii) and 10(2) of the Act shall include identification in terms of sub-regulation 17(1) and may include interrogation and fingerprinting, and such foreigner shall
  (a) present himself or herself to an immigration officer at a port of entry;
  (b) satisfy such immigration officer that he or she is not, nor is he or she likely to become
    (i) an illegal foreigner;
    (ii) an undesirable person;
    (iii) a prohibited person; or
    (iv) a foreigner with financial resources insufficient to maintain him- or herself and his or her dependants during the intended stay in the Republic and to undertake the return or onward journey;
  (c) provide proof of settlement of any outstanding administrative fine imposed under section 50(1) of the Act or proof of an appeal validly lodged against them in terms of section 8(2) of the Act;
  (d) hand to the immigration officer, if required to do so, a form containing substantially the information prescribed in Annexure 4, provided that
    (i) notwithstanding the fact that such form has been completed prior to reporting to an immigration officer, the immigration officer concerned may require of such person either to complete such form once again, or to make a declaration containing substantially the information prescribed in Annexure 5; and
    (ii) if a person is unable to fill in or understand such form or declaration, the immigration officer must question him or her, if necessary with the help of an interpreter, and thereafter the immigration officer must fill in the form or declaration or cause it to be filled in and thereupon require such person to sign such form or declaration or to affix his or her left thumb print thereto; and
  (e) when seeking admission into the Republic, submit, if so required by an immigration officer, to an examination by a medical practitioner designated by the Director-General if it is suspected that such person is afflicted with any infectious disease, which under this Act would render him or her a prohibited person, provided that the medical examination of such a person who has

arrived in the Republic on a ship must take place either on such ship, or at such other convenient place as determined by an immigration officer, as soon as possible after the arrival of the ship.

(4) Failure on the part of a foreigner seeking admission into the Republic to comply with the examination procedures contained in sub-regulations (a) to (e) supra or to answer any legitimate and pertinent question shall cause such foreigner to be dealt with in terms of section 34(8) of the Act.

(5) The issuance of a visa to a person who qualifies for a temporary or permanent residence permit in terms of the Act and these Regulations may be refused only for good cause.

(6) In the case of a person found to be inadmissible by an immigration officer after an interview, such immigration officer shall record the general contents of such interview substantially as set out in Annexure 5A.[21]

Regulation 11

Certification by a person other than a chartered accountant

(1) Whenever, in terms of section 1(2) of the Act, an applicant elects to furnish a certification by a person other than a chartered accountant, the full names, date of birth, status, identity document or passport number, position, capacity and qualifications of such person to whom the facts are known shall be made known and proven to the Department.

(2) Pursuant to section 2(1)(k) of the Act, when the Department is required to verify such facts as envisaged in section 1(2) of the Act,

(a) an additional fee of R10 000-00 in respect of sections 15, 19, 21, 26 and 27 of the Act, or

(b) an additional fee of R6 000-00 in respect of section 18 of the Act

shall be payable on application, provided that where the costs incurred by the Department exceed this amount, such additional amount shall be paid by the applicant prior to the final consideration of the application; and

(d) all documentation required by the Act and necessary for verification shall be submitted to the Department together with the certification.[22]

Regulation 12

Objectives and Structures of Immigration Control

(1) In pursuance of sections 2(1)(n) and 2(2)(f) of the Act, the Department may

(a) place airline liaison officers at selected ports in foreign countries from which illegal foreigners regularly depart to the Republic[23]; and

(b) establish and maintain liaison officers in foreign countries from which large numbers of illegal foreigners originate in order to liaise with the relevant authorities of the foreign states concerned to seek their cooperation to conduct programmes which deter illegal immigration towards the Republic and facilitate the return and resettlement of deported illegal foreigners.

(2) In order to inspect workplaces as envisaged in section 2(2)(a) of the Act, an immigration officer may, after having appropriately identified him- or herself, enter workplaces without the need for a warrant to exercise the powers and perform the functions set out in the Act, and may inspect and make copies of employment and other relevant records.[24]

(3) (a) The figure to be reported to Parliament and the Board and to be known as the training fund envisaged in section 2(2)(g)(i) of the Act shall include 70% of all funds received or collected from employers in the form of the training fees set out in regulations 28(3) and 30(8), and of fines levied against employers for violation of the Act[25].

(b) The figure to be reported to Parliament and the Board and to be known as the judicial assistance fund envisaged in section 2(2)(g)(iv) of the Act shall include 60% of all funds received or collected from fines, except those referred to in sub-regulation 3(a) above, and forfeited deposits and financial guarantees.

Regulation 13

Administering the Ports of Entry

(1) In order to administer the ports of entry as envisaged in section 2(2)(l) of the Act, the Department shall appoint an official of the Department as the port manager at each port of entry, provided that the

Department may appoint as such port manager an official employed by the South African Revenue Service or the South African Police Service in consultation, as the case may be, with the Commissioner of Revenue Services or the Provincial Commissioner of Police of the Province where the port of entry concerned is located.

(2) The port manager shall perform all duties and functions necessary for the proper administration of the port of entry and the coordination of all the organs of State carrying out functions or exercising powers at the port of entry or in respect thereof, including, but not limited to ensuring the

(a) maintenance of communal facilities within the port of entry, excluding roads, but including perimeter, fencing, water and sewerage services;

(b) maintenance of security within the port of entry perimeter;

(c) provision and maintenance of communal information technology equipment and accommodation;

(d) provision and reticulation of electric power within the port of entry, including the provision and maintenance of emergency back-up power;

(e) promotion and maintenance of conditions facilitating the flow and processing of persons, goods and vehicles through the port of entry;

(f) provision of access control;

(g) any budgetary requirements related to the functions and responsibilities listed or referred to in this sub-regulation,

(h) interdepartmental and intergovernmental liaison at the port of entry; and

provided that

(i) the office heads of all the other organs of State represented or operating at the port of entry shall report to the port manager for the purpose of the functions and responsibilities listed or referred to in this sub-regulation; and

(j) the Department may relieve a port manager of any of the functions and responsibilities listed or referred to in this sub-regulation when appointing him or her or at any time thereafter.

(3) A port manager shall have no power in respect of the functional responsibilities and decision making of the officials employed by other organs of State represented or operating at the port of entry.

(4) (a) Unless otherwise determined by the Director-General, at ports of entry that are seaports, rail ports and airports, the owner of the premises shall fulfil any aspect of the responsibilities related to the functions listed in sub-regulations 2(a) to (g) supra as directed by the port manager.

(b) Unless otherwise determined by the Director-General, at land ports, other than those contemplated under (a) above, that are an integral part of an institution, the owner or manager of such institution shall be the port manager for purposes of this regulation.

(5) In administering the ports of entry the Department shall give due regard to the recommendations of the committee contemplated in section 6 of the Act.

Regulation 14

Powers of the Department

(1) The services envisaged in section 3(1)(d)(ii) of the Act are those services referred to in section 42(1)(b)(i) and (ii) of the Act.

(2) Subject to sub-regulations (3) and (4) the Director-General may delegate any of the powers and functions vested in him or her, in terms of the Act or received through delegation from the Minister[26], to an appropriate officer of the Department.

(3) For purposes of the Act and these Regulations, the Department shall be structured into Regions to be determined by the Minister after consultation with the Board and presided over by a Regional Director appointed by the Minister.[27]

(4) A Regional Director shall

(a) carry the primary responsibility of administering and applying the Act and these Regulations in respect of cases and applications in the Region, and may delegate his or her functions to other officials in writing and as he or she may decide from time to time, subject to ratification by the Director-General;

(b) subject to the Act and these Regulations, express the decision-making power of the Department in respect of cases and applications, and, in this respect, in his or her capacity, sue and be sued in the name and on behalf of the Department;
(c) when requested, personally or through his or her appointed officials, give reasons for a decision of the Department before the Minister or the Board; and
(d) through his or her appointed officials, represent the Department before a Court

provided that the Director-General shall

(e) ensure the uniform application of the Act and these Regulations;
(f) ensure the efficient and effective operation of the Department;
(g) liaise or interface with organs of foreign states or international institutions dealing with migration or law enforcement[28]; and
(h) exercise and perform the other powers and functions set out in the Act and these Regulations.

(5) The Department may have immigration officers in missions to exercise the functions of the Department.

(6) For purposes of these Regulations, the Regional Office of the Department shall be one or more venues designated by a Regional Director within a Region, provided that such designation is not objected to
(a) by the Director-General within 15 days, and
(b) by the Board within 30 days.

(7) No interpretative circular or directive shall be issued or be valid unless
(a) consonant with the letter and the spirit of the Act and these Regulations and related relevant endnotes,
(b) issued by the Director-General,
(c) tabled with the Board and the Minister, and
(d) not objected to by the Board or the Minister within 7 days of such tabling.

Regulation 15
Immigration Advisory Board

(1) The Board may establish and operate through standing committees which shall report to the Board, to assist it to carry out its functions on
(a) border control and administration of ports of entry;
(b) investigations and enforcement;
(c) xenophobia and human rights protection;
(d) work and corporate permits and labour matters;
(e) temporary and permanent residence;
(f) international relations;
(g) security and liaison with law enforcement agencies; and
(h) general matters[29].

(2) (a) Subject to these Regulations, the Board may adopt rules governing its meetings.
(b) (i) The Board shall be validly constituted when two thirds of its members have been appointed;
(ii) A meeting of the Board shall be validly constituted when half of its members are present; and
(iii) A decision of the Board must be adopted with the support of half of its members present, with the Chairperson having a casting vote in the case of a tie, provided that a decision relating to the advice contemplated in regulation 28(3) shall be supported by two thirds of its members present.
(c) The Chairperson shall convene the Board or a standing committee when so requested by the Minister or the Director-General and place on the agenda of such meeting or that of a standing committee, *inter alia*, any relevant matter requested by the Minister or the Director-General.
(d) The Minister may attend and address any meeting of the Board or any of its committees.
(e) The Minister may appoint the Chairperson of the Board on a full time basis if deemed necessary, and may determine the duration of his or her full time or part time appointment, which in any case, shall not exceed four years, subject to any renewal the Minister deems fit.
(f) Any member of the Board who has a direct or indirect personal interest of any nature in respect of any given matter considered by the Board or any of its committees shall declare such conflict

and may not vote in any respect of any decision relating thereto, and when appropriate shall recuse him or herself and not be present when the relevant matter is discussed.

(g) The Minister may designate
  (i) a member of the Board when the Chairman of the Board is not available or is abroad for a period shorter than 30 days,
  (ii) a person who is not a member of the Board when the Chairman of the Board is not available or is abroad for a period longer than 30 days,

to chair the Board as its Acting Chairman and such appointment shall last until the Chairman is again available or in the Republic as the case may be.

(h) The Chairman of the Board shall serve
  (i) on a full time basis and,
  (ii) under terms and conditions to be determined, subject to the Act, by the Minister consistently with the prescripts applicable to the civil service.

(i) On request of the member concerned, the Minister may authorise members of the Board other than the Chairman to serve on a full time basis.

Regulation 16
Adjudication and Review Procedures

(1) The notification of a contemplated decision envisaged in section 8(1) of the Act, shall be in the form of and substantially contain the information set out in Annexure 6[30].

(2) The notification of an effective decision envisaged in sections 8(2) and 8(4) of the Act, shall be in the form of and substantially contain the information set out in Annexure 7.[31]

(3) Subject to the provisions of sub-regulation 19(6), a person at a port of entry who has been notified in terms of section 34(8) of the Act by an immigration officer that he or she is an illegal foreigner, shall depart forthwith and, unless subsequently admitted, shall only have access to the review procedure in terms of sections 8(2) and 8(3) of the Act from a foreign country.[32]

Regulation 17
Admission and Departure[33]

(1) (a) (i) In order to identify himself or herself in terms of section 9(2) of the Act, a citizen shall present himself or herself to an immigration officer at a port of entry; and
  (ii) produce a passport or identity document issued in terms of the Identification Act, 1997 (Act No 68 of 1997), confirming his or her citizenship.

(b) In order to identify himself or herself in terms of section 9(2) of the Act, a resident shall
  (i) present himself or herself to an immigration officer at a port of entry, and
  (ii) identify himself or herself as such by means of a valid passport, as well as proof of his or her status contemplated in sections 25(2) or 31(2)(b) of the Act.

(c) The admission or departure of a resident shall be endorsed in his or her passport and recorded, except where bilateral agreements between the Republic and another country provide for the waiving thereof. The entry or departure of a citizen shall not be recorded, provided that the Department may conduct any relevant investigation, including passport scanning, in respect of such citizen's request to depart from or enter the Republic and, for good cause only, may deny a citizen the right to depart from, but not the right to enter the Republic.[34]

(d) When a foreigner enters the Republic as envisaged in section 9(4)(a) of the Act, his or her admission shall be recorded.

(e) A foreigner may only depart from the Republic if his or her departure has been recorded and his or her passport has been endorsed accordingly.

(2) Any person who regularly crosses the border at a port of entry and in whose passport an immigration officer has, upon application, endorsed an exemption from the requirements of sub-regulations 10(3) or 17(1), shall only be required to report to an immigration officer upon the expiry of such exemption. The application for and all matters pertaining to the application for and the issuance of such an exemption are contained in item 50 of Schedule A, [35]provided that

(a) an immigration officer may at any time during a crossing require a person to whom such an exemption was issued, to produce his or her passport; and

(b) an exemption granted in terms of this regulation may at any time be withdrawn by an immigration officer.

(3) The application for and all matters pertaining to the application for and the issuance of the certificate referred to in section 9(3)(a) of the Act in lieu of a passport shall be in the form of and contain substantially the information prescribed and be subject to the conditions set out in item 2 of Schedule A, provided that, in respect of a deportee, the application provided for in column 3 of item 2 shall be deemed to be satisfied by the Department's order of deportation of the illegal foreigner concerned and shall not be required.

(4) The application for and all matters pertaining to the application for and the issuance of an exemption certificate referred to in section 9(3)(c)(i) of the Act and the written permission or passport endorsement referred to in 31(2)(c) of the Act are contained in item 3 of Schedule A.

(5) Those foreigners who, in terms of these Regulations, may report to an immigration officer without a visa shall be deemed to hold a transit visa contemplated in section 24(2) of the Act when in transit at a port of entry.

(6) The application for an exemption contemplated in section 9(3)(c)(i) or 31(2)(c) of the Act and in this regulation shall be substantially in the form and with the contents set out in Annexure 8.

Regulation 18
Temporary Residence Permits[36]

(1) The application for and other matters relevant to the application for and issuance of a temporary residence permit referred to in section 10(2) of the Act shall be as set out under the relevant items of Schedule A.

(2) A foreigner who wishes to enter the Republic for a purpose for which a permit cannot be issued at a port of entry in terms of Schedule A is required, may be admitted on a visitor's permit valid for a period of up to three months, provided that he or she

(a) qualifies for such permit and on condition that he or she shall report within 14 days of entry to an office of the Department to apply, on the form substantially containing the information set out in Annexure 14 for the required permit,[37] and

(b) shall not conduct any activity inconsistent with a visitor's permit.[38]

(3) The extension or renewal of a temporary residence permit may be refused only for good cause when the foreigner concerned would qualify for such permit in terms of the Act and these Regulations.

(4) A temporary or permanent residence permit, except a permit issued in terms of section 23 of the Act, shall be valid for multiple entries within its validity period, provided that this sub-regulation shall not apply to any permits issued in terms of section 22 of the Refugees Act, 1998 (Act No. 130 of 1998).

(5) (a) A foreigner who wishes to apply for a change of status or conditions relating to his or her temporary residence permit, or to renew the validity of a permit issued in terms of section 11 of the Act, or to apply for a subsequent permit issued in terms of sections 12 to 20 and 22 of the Act whilst inside the Republic, must submit his or her application at least thirty days prior to the date of expiry of his or her permit.[39]

(b) In the case of a foreigner who does not apply at least thirty days prior to the date of expiry of the permit, but applies within the validity period of his or her permit, a visitor's permit not exceeding thirty days may be granted on application in order to allow such foreigner to await the outcome of the renewal application or change of status or conditions application.[40]

(c) Should the Department fail to finalize within thirty days its decision on a complete application lodged in terms of paragraph (a), the relevant permit shall be deemed to be extended until such decision is made.

(d) A Regional Director shall provide the Board and the Director General with a bi-yearly report indicating how many applications were not finalized within thirty days and the reasons therefor.

(6) (a) In the case of an illegal foreigner who has not been arrested for the purpose of deportation or ordered to depart and who applies after the date of expiry of his or her permit, a visitor's permit may be issued or renewed on application, provided that such illegal foreigner demonstrates, to the satisfaction of the Department, that he or she was reasonably unable under the circumstances to apply for the extension, renewal or subsequent permit within the period specified in sub-regulation (5).

(b) In the case of an illegal foreigner, excluding a prohibited person, who is the spouse or dependant, no older than 25 years of age, of a citizen or resident, who applies for a permit, a visitor's permit may be granted for a period not exceeding six months to enable such illegal foreigner to apply for any other temporary residence permit or permanent residence permit, within such period.

(c) The applications for the subsequent permits referred to in paragraph (a), which shall be in the form of and substantially contain the information set out in Annexure 15, shall only be required to comply with the requirements under item 1 of Schedule A, and, if applicable, produce a certification by the relevant institution or person who vouched for the applicant's purpose of stay in the Republic showing that such purpose has not changed since the issuing of the initial permit.

(7) The application for the change of status or conditions envisaged in sub-regulation (5) shall be in the form of and substantially contain the information set out in Annexure 16, and the renewal of a permit or a subsequent permit envisaged in sub-regulation 6(a) shall be in the form of and substantially contain the information set out in Annexure 17.

(8) The Department shall, when approving an application for which more than one permit may be required, issue the relevant permit for the primary purpose of the applicant's stay and endorse such permit valid for any secondary purpose(s) as may be approved, subject to the provisions of the Act.

(9) During the period of its validity, a temporary residence permit shall entitle its holder to report to an immigration officer at a port of entry for multiple admissions in the Republic, except in respect of the holder of a visitor's permit, subject to section 11(4) of the Act and regulation 19(8).

(10) Subject to the Act, the foreign spouse, or dependent child under the age of 25, of a citizen or a resident shall be entitled, at his or her option, to a visitors permit, a study permit or a general quota work permit, provided that in the last case the training fee contemplated in regulation 28(3) shall not be applicable.

Regulation 19
Visitor's Permit

(1) (a) The visitor's permit envisaged in section 11 of the Act shall be in respect of stays for all temporary purposes, not including work, other than those purposes for which the Act contemplates a different permit, and shall include but not be limited to tourism, business, education shorter than three months, medical treatment shorter than three months, visit of a relative shorter than three months, and working activities[41] shorter than three months conducted in pursuance of an employment contract concluded abroad, remunerated abroad and partially calling for performance abroad[42].

(b) The visitor's permit envisaged in section 11 of the Act shall be in the form of and substantially contain the information set out in Annexure 18, provided that where a visa was issued outside the Republic, upon admission such visa shall be deemed to be a permit for the purpose of section 11 of the Act and the period of validity of such a permit shall, for the purpose of Schedule A, item 1, column 6(e), be calculated from the date of admission. The application for and all matters relevant to the application for and the issuance of a visitor's permit are as set out under items 4 to 9 of Schedule A.[43]

(2) The foreign countries envisaged in section 11(1)(b) of the Act shall be those listed in Schedule C, provided that the Director General may, for good cause, exclude any person or category of persons from the provisions of section 11(1)(b) of the Act and such person or category of persons shall be subject to the provisions of section 11(1)(a) of the Act.

(3) The financial guarantee envisaged in sections 11(1)(b) and 11(5) of the Act shall be required if the person concerned is considered by the immigration officer likely to become a public charge and shall be in the form of a return or onward ticket, or proof of sufficient funds to purchase such a ticket, or a cash deposit or major credit card refundable charge equal to the cost of such a ticket and/or an amount not exceeding R10 000-00, to be returned upon his or her departure or forfeited in case of his or her failure to depart on time or breach of the terms and conditions of his or her status.[44]

(4) The activities and cases envisaged in section 11(1)(ii)(dd) are those listed in item 9 of Schedule A and shall be dealt with in accordance with sub-regulation (1) supra.[45]

(5) A visitor's permit issued to a spouse in terms of section 11(1)(ii)(dd) shall lapse[46] upon the dissolution of the spousal relationship. The Department may at any time satisfy itself that a good-faith spousal relationship exists and/or continues to exist as prescribed in regulation 33.

(6) (a) An immigration officer at the port of entry concerned may, after having dealt with an illegal foreigner in terms of section 34(8) of the Act, afford such illegal foreigner the opportunity to be further examined, upon which the illegal foreigner shall
  (i) submit to such immigration officer a duly completed form substantially containing the information in Annexure 19;
  (ii) pay the processing fee prescribed in Schedule G; and
  (iii) submit to any examination contemplated in these Regulations, as well as further examination by means of an interview, calling for
    (aa) supporting documentation;
    (bb) particulars of the illegal foreigner's contact person(s) in the Republic;
    (cc) any other information to establish the bona fides of the illegal foreigner and his or her purpose of visit; and
    (dd) any other information that may be relevant under the circumstances.

(b) Following the examination contemplated in paragraph (a), the immigration officer may maintain the refusal of the illegal foreigner's admission, if for good cause such examination failed to satisfy the immigration officer that such person is not or is not likely to become an illegal foreigner, or if the immigration officer is satisfied that good cause exists why such person, albeit an illegal foreigner, should nevertheless be admitted.

(c) Failure on the part of the illegal foreigner to satisfy the immigration officer as contemplated in sub-regulation (b) shall result in a decision of the immigration officer in terms of section 34(8) of the Act, which decision shall be final in accordance with section 8(5) of the Act.

(d) Following the examination contemplated in paragraph (a), if the relevant immigration officer has found the person concerned not to be or not likely to become an illegal foreigner, such immigration officer may admit such person.

(e) Following the examination contemplated in paragraph (a), if the relevant immigration officer is satisfied that good cause exists for the person concerned to be admitted despite being an illegal foreigner, such immigration officer shall communicate the application to a designated official of the Department for final consideration.

(f) If the designated official referred to in sub-regulation (e) approves the illegal foreigner's request for admission in circumstances other than those contemplated in Regulation 10(2)(a), the immigration officer concerned shall determine a deposit in accordance with the provisions of regulation 20 and the admission of the illegal foreigner shall be subject to such deposit having been paid.

(g) If admitted in terms of sub-regulation (f), an illegal foreigner shall be issued with a visitor's permit for the purpose and period and under the conditions listed in item 4 of Schedule A.

(7) Any non-citizen or non-resident[47], who does not otherwise have a status, shall be deemed to hold a visitor's permit while in detention or imprisoned for reasons other than being an illegal foreigner, which permit shall be deemed to have lapsed twenty four hours prior to such person's release for any reason or cause.

(8) Unless otherwise specified therein or in a valid visa, a visitor's permit does not allow the bearer to be admitted more than once, provided that when a visa is not required in terms of these Regulations, and in the absence of any indication that the visitor's permit is for a single entry only, the visitor's permit shall allow multiple admissions.[48]

Regulation 20
Deposit and Financial Guarantee

(1) The amounts and guarantees envisaged in regulations 19(6)(f), 28(10), 30(7) and 39(17) shall be determined by the immigration officer for good cause and under the circumstances but shall not exceed the sum of the following amounts
  (a) the cost of a single full fare economy ticket to the country of origin concerned[49];
  (b) the cost of a return ticket to the country of origin of the foreigner for an escort;

(c) the estimated detention, medical and transport costs of the illegal foreigner; and
(d) subsistence and travel costs and allowances for escort(s)

(2) Any deposit or financial guarantee contemplated in these Regulations or in the Act shall be forfeited upon a material failure to meet the relevant condition, unless, when such condition is tied to a deadline and good cause exists, before or after the expiry of such deadline, the immigration officer allows a ten day grace period to apply.

Regulation 21
Diplomatic Permit

(1) A diplomatic permit envisaged in section 12 of the Act shall be in the form of, contain such information, and be subject to such conditions as set out in item 10 of Schedule A.

(2) The international organisations referred to in section 12(1)(a) of the Act shall be those referred to in regulation 6(3).

(3) The dignitaries of a foreign state envisaged in section 12(1)(e) of the Act shall be those whom the Department of Foreign Affairs from time to time identifies as such to the Director-General[50].

(4) The Department of Foreign Affairs shall
(a) inform the Department of any failure of a diplomatic permit holder to comply with the terms and conditions of his or her permit and to depart when required;
(b) inform the Department if under the circumstances at any time it lacks the capacity to perform satisfactorily the function contemplated in this regulation; and
(c) ensure that the requirements, procedures and forms for the issuance of a diplomatic permit are complied with, including the processing of the relevant application on behalf of the Department, provided that
(i) copies of all processed applications shall be sent to the Department; and
(ii) at any time the Department may elect to process an application or issue a diplomatic permit.

(5) The application forms for a diplomatic permit shall be substantially in the form of and substantially contain the information set out in Annexure 19A. The diplomatic permit shall be substantially in the form and substantially contain the information set out in Annexure 19B[51].

(6) The Department of Foreign Affairs may issue a diplomatic permit subject to the Act and these Regulations and by means of the Annexure contemplated in sub-regulation (5).

Regulation 22
Study Permit

(1) (a) A study permit shall be issued by the Department in terms of section 13(1)(a) of the Act by means of an endorsement in the passport of the applicant as stipulated in column 5 of item 11(1) of Schedule A.[52]
(b) A study permit shall be issued by the Department in terms of section 13(1)(b) of the Act by means of an endorsement in the passport of the applicant as stipulated in column 5 of item 11(2) of Schedule A.

(2) For the purposes of the Act, study shall mean study at a primary, secondary or tertiary educational institution or any other bona fide institution of learning, including but not limited to professional, training, cultural, technical, religious, research, vocational, sportive, language and entertainment institutions of learning.

(3) The guarantees required in section 13(1)(b)(iii) of the Act shall *mutatis mutandis* be the proof of financial means referred to in item 1, column 4(d) of Schedule A, provided that the Minister or, after consultation with the Board, the Director General may waive this requirement in respect of nationals of specific countries[53].

(4) The periodic certification required in terms of section 13(1)(b)(v) of the Act shall be in the form of and substantially contain the information prescribed in Annexure 20.

(5) The validity of a study permit shall be as follows -
(a) permits for tertiary education may be validated for the duration of the course;
(b) permits for primary and secondary education may be validated for the period for which the student has been accepted; and

(c) permits for other institutions of learning may be validated for the duration of the course, but not to exceed two years[54].

(6) The holder of a study permit may conduct work as envisaged in section 13(3)(a) of the Act, provided that the period that such person may undertake part-time work shall not exceed 20 hours per week, and provided further that this limitation shall not apply during academic vacation periods when the registrar of the institution concerned consents to it in writing.[55]

(7) The holder of a study permit may be granted permission as envisaged in section 13(3)(c) of the Act, on application, to conduct work in the form of practical training in a field related to his or her studies, on submission of the following documentation:

(a) a letter from the educational institution or professional body confirming that practical training is required to complete the intended study experience or prepare for the qualifying examination; and

(b) a letter from the prospective employer, offering practical training.

(8) When a permit is to be issued in terms of section 13(1)(b) of the Act, the registrar's office or the designated official as envisaged in section 13(1)(b) of the Act may be authorized to submit an application for a study permit complying with the requirements of column 4 of item 11(2) of Schedule A on behalf of a prospective student. The educational institution may apply for such authorisation by submission of a written request that includes, when applicable, proof of registration with the Department of Education, or other relevant body.[56]

(9) The authorisation envisaged in sub-regulation (8) may be withdrawn upon non-compliance with the Act or unsatisfactory performance in fulfilling the obligations arising out of section 13(1)(b) of the Act.

(10) Pursuant to section 2(1)(k) of the Act, where the applicant opts to apply for a study permit in terms of section 13(1)(a) of the Act in respect of a learning institution in respect of which a study permit in terms of section 13(1)(b) of the Act can be applied for, an additional fee of R6 000-00 shall be payable on application.

(11) A foreigner who is 25 years of age or younger and who is the child of a citizen or resident may, on a written supporting demand of at least one of his or her parents who resides in the Republic and who undertakes to maintain such foreigner in his or her parental care, qualify for a study permit without having to provide the proof of financial means contemplated in these Regulations.

(12) A foreigner who holds a valid work permit may conduct study within an institution of learning by virtue of such work permit when

(a) such study is conducted within the parameters of his or her employment relationship and at the employer's request,

(b) the study period is intended not to exceed one year,

(c) such foreigner continues to be remunerated by his or her employer as if he or she were working, and

(d) his or her passport has been endorsed by the Department for such purpose on the basis of a letter or other documentation from his or her employer which satisfies the Department of compliance with paragraphs (a) to (c) above.

Regulation 23
Treaty Permit

(1) A treaty permit shall be issued in terms of section 14(2)(a) of the Act by means of an endorsement in the passport of the applicant, and the application for such permit and other matters related hereto are prescribed in item 12 of Schedule A[57].

(2) The treaty permit may be issued by

(a) the Department;

(i) after having verified that such foreigner falls within the specifically intended class of persons covered by such agreement or treaty;

(ii) subject to terms and conditions which reflect the provisions and purposes of such treaty or agreement and of such foreigner's sojourn or activities in the Republic; and

(iii) in such a manner that such foreigner's compliance with the immigration laws and permit's terms and conditions may be monitored, or

(b) the Department of Foreign Affairs or the other organ of State responsible for the implementation of the treaty concerned under a delegation from the Department, provided that
  (i) information relating to the failure of such foreigner to comply with the terms and conditions of the permit and to depart when required, is conveyed to the Department;
  (ii) the organ of State concerned satisfies the Department that, under the circumstances, it has the capacity to perform this function; and
  (iii) such organ of State ensures that the requirements, procedures and forms for the issuance of such permit are complied with, including the processing of the relevant application on behalf of the Department, provided that
    (aa) copies of all processed applications shall be sent to the Department; and
    (bb) at any time the Department may elect to process an application.

Regulation 24
Business Permit[58]

(1) A business permit envisaged in section 15 of the Act shall be in respect of a qualifying investor or self-employed foreigner who intends to establish, or invest, in a business in the Republic, or has done so, or intends to be employed by such business, and the application for such permit shall be submitted in accordance with items 13 and 14 of Schedule A.

(2) An application referred to in sub-regulation (1) shall include a certification by a chartered accountant to the effect that at least two of the following criteria are met, one of which shall be the one contemplated in paragraph (a) or paragraph (h)[59]
  (a) at least R2 000 000-00 value[60] to be, or invested as part of the book value of the business;
  (b) business track record to prove entrepreneurial skill;
  (c) proof that the business contributes to the geographical spread of economic activity;
  (d) proof that at least five citizens or residents shall be employed;
  (e) proof that the business in question is in one of the following sectors
    (i) information or communication technology;
    (ii) clothing or textiles;
    (iii) chemicals or biotechnology;
    (iv) agro-processing;
    (v) metals or minerals;
    (vi) automotive or transport;
    (vii) tourism; or
    (viii) crafts
  (f) the export potential of the business; or
  (g) calls for or involves a transfer of technology not previously generally available in the Republic
  (h) the business is, or can reasonably be expected to become, viable both in the short and long term when prudently considering its capital and other input requirements, including the applicant's complete living costs.

(3) The financial or capital contribution envisaged in section 15(1)(a) of the Act for the establishment of a business shall originate from abroad and may include intangibles generally accepted in terms of accounting principles as business assets, and shall be in the form of foreign capital.

(4) The certificate envisaged in section 15(1)(c) of the Act shall certify compliance with the criteria set out in sub-regulation (2) and must be submitted in support of each application, as well as each application for a renewal of the permit.[61]

(5) A business permit may be issued as valid up to 4 years at a time, provided that it shall lapse if the certification contemplated in section 15(1)(c) is not renewed as contemplated in section 15(4) of the Act.[62]

(6) The work referred to in section 15(2) of the Act that may be conducted by the holder of a business permit shall be limited to any work related to the relevant business activities.

(7) A business permit may be withdrawn if the business no longer maintains the capitalisation set out in sub-regulation (2)(a) and (h), if applicable.[63]

(8) On application, the Department shall reduce the capitalisation set out in sub-regulation (2)(a) on the basis of a recommendation of either the Department of Trade and Industry or the Department of Science and Technology, or may do so on the basis of a recommendation of another competent organ of State.[64]

Regulation 25
Crew Permit

(1) The crew permit referred to in section 16 of the Act shall be in the form of and contain such information and be subject to such conditions as set out in items 15 and 16 of Schedule A.

(2) Crew members who are on board of, or who have joined a ship of a foreign country, other than a private ship engaged in non-commercial activities or privately chartered for non commercial activities, in a port of entry and who have been entered into the articles of such ship shall be deemed to be in possession of crew permits envisaged in section 16 of the Act and, if required, of a visa, provided the owner or master of the ship has complied with the financial guarantees stipulated in this regulation in respect of such crew and has paid any outstanding fine.

(3) The financial guarantees referred to in sections 16(1)(b)(ii) and (iii) of the Act respectively shall be in the form of an agreement with the owner of such ship whereby the owner undertakes or it is undertaken on behalf of the owner represented by an agent at the port of entry, that all crew who are entered in the articles of the ship shall be on board when the ship leaves such port of entry, failing which the owner shall forfeit an amount of R5 000-00 to the Department in respect of each such crew member, as well as all costs related to the tracing, detention and removal of such crew member.

(4) The predetermined area referred to in section 16(2) of the Act shall be the environs of the port city or the shortest route between the ship and the port of entry or the area where the permit holder indicates to the immigration officer he or she has planned to dwell while the ship is ashore or landed, provided that for purposes of this sub-regulation a ship shall only include an aircraft, vessel, train or bus.

Regulation 26
Medical Treatment Permit

(1) (a) A medical treatment permit shall be issued by the Department in terms of section 17(1)(a) of the Act by means of an endorsement in the passport of the applicant as stipulated in column 5 of item 17(1) of Schedule A.

(b) A medical treatment permit shall be issued by the Department in terms of section 17(1)(b) of the Act by means of an endorsement in the passport of the applicant as stipulated in column 5 of item 17(2) of Schedule A.

(2) For the purposes of the Act, medical treatment shall mean treatment at a private or public hospital or health facility or any other bona fide institution of treatment, including but not limited to health farms, sanitaria, old age homes, physiotherapy or rehabilitation centres and detoxification centres.

(3) The periodic certification required in terms of section 17(1)(b)(iv) of the Act shall be in the form of and substantially contain the information prescribed in Annexure 20A.

(4) When a permit is to be issued in terms of section 17(1)(b) of the Act, the admissions office or the designated official as envisaged in section 17(1)(b) of the Act may be authorised by the Department to submit an application for a medical treatment permit complying with the requirements of column 4 of item 17(2) of Schedule A on behalf of a prospective patient. The medical treatment institution may apply for such authorisation by submission to the Department of a written request that includes, when applicable, proof of registration with the Department of Health, or other relevant body.

(5) The authorisation envisaged in sub-regulation (4) may be withdrawn by the Department upon non-compliance with the Act or unsatisfactory performance in fulfilling the obligations arising out of section 17(1)(b) of the Act.

Regulation 27
Relative's Permit

(1) The application for and other aspects relevant to the application for and the issuance of a relative's permit as envisaged in section 18 of the Act, are as set out under item 18 of Schedule A.

(2) The financial assurance required by section 18(1) of the Act shall consist of the following documentation

(a) certification by a chartered accountant confirming the sponsor's and/or the joint means of support of the applicant and the sponsor, for the requested duration of the permit;[65]

(b) the minimum amount required in respect of sub-regulation (a) shall be R5 000-00 per month per person, which shall not apply in the case of a spouse or a dependent minor child.[66]

(3) The period of validity of the permit shall be determined by the financial assurance provided, but will not exceed a period of 24 months at a time.

(4) A relative's permit issued to a spouse shall lapse[67] upon the dissolution of the spousal relationship and the Department may at any time satisfy itself that a good faith spousal relationship exists and/or continues to exist as prescribed in regulation 33.

Regulation 28
Work Permit

(1) A quota work permit envisaged in section 19(1) of the Act shall be issued by the Department by means of an endorsement in the passport of the applicant.[68]

(2) The application for and other matters relating to the application for and the issuance of a quota work permit are set out under item 19 Schedule A.

(3) The employer of a foreigner who is issued with a general quota permit as envisaged in section 19(1) of the Act and in sub regulation (4) except paragraph (4)(e)[69], shall pay a training fee in respect of each such employee, amounting to two percent of such foreigner's taxable remuneration[70] to be paid quarterly in arrears, provided that, within fourteen months of the commencement of these Regulations, this amount may be changed in general or in respect of one or more identified categories of workers by public notice in the Government Gazette issued by the Minister acting in consultation with the Board[71]. By public notice in the Government Gazette the Minister shall determine how such training fee is to be collected by the Department or by other organ of State or other entity on behalf of the Department.[72]

(4) (a) A general quota work permit may be issued to a foreigner, provided that such foreigner's prospective employer has submitted to the Department

(i) the certification from a chartered accountant as set out in section 21(2)(a) of the Act, provided that[73]

(aa) a copy of such certification shall be conveyed by the applicant by registered priority mail or by hand to the office of the Department of Labour referred to in regulation (12),

(bb) proof of the mailing referred to in (aa) or receipt by the relevant office Department of Labour be part of the application, and

(cc) if such certification is objected to for good cause by such office of the Department of Labour within twenty days of its posting, such permit shall lapse;

(ii) a certification from a chartered accountant

(aa) describing in general terms the job description;

(bb) certifying that the job position falls within a relevant category determined by the Minister in terms of section 19(1) of the Act;

(cc) certifying that the position exists and is intended to be filled by such foreigner[74]*;* and

(dd) certifying that such foreigner possesses the legal qualifications required for the performance of the tasks called for by the job position, taking into account any applicable requirement of the South African Qualification Authority, and

(iii) an undertaking to notify the Department when such foreigner is no longer employed or is employed in a different capacity or role.

(b) A general quota work permit shall lapse if, within nine months of its issuance, and within every year thereafter, its holder fails to submit to the Department certification from his or her employer's chartered accountant that he or she is still employed, of the terms and conditions of his or her employment, including the job description, and that such employer has made the payments referred to in sub-regulation (3).

(c) The training fees envisaged in sub-regulation (3) shall be determined as the applicable fee at the time of issuance of the permit and shall not be increased in respect of that permit for five

years and six months from the date of issuance of such permit, provided that subsequent general quota work permits issued to the same worker in respect of substantially the same type of work shall be deemed one for purposes of this paragraph.

(d) The Department may reduce or waive the payment referred to in sub-regulation (3)

(i) when so requested by the employer, after consultation with the Departments of Labour[75] and Trade and Industry, if and for as long as it is satisfied that the employer concerned has in place a training programme for citizens and residents aimed at transferring skills from foreigners to citizens or residents, and/or reducing such employer's dependence on foreign labour;

(ii) when so requested by the Department of Trade and Industry in respect of foreign investments; or

(iii) when so requested by the foreigner concerned, provided that in such case the Department shall evaluate and verify the description and the requirements of the job position, the skills and qualifications of such foreigner as they relate to such job description, and efforts made by the employer, including those set out in sub-regulations (5) and (6), to hire a resident or citizen and determine that no resident or citizen is willing, ready and able to take up such position, and satisfy itself that no such resident or citizen exists.[76]

(e) An extraordinary quota permit for predetermined skills or qualifications may also be issued by the Department to a foreigner who has skills and/or qualifications which fall within a category determined by the Minister by public notice in the Government Gazette on recommendation of the Board and after consultation with the Ministers of Labour and Trade and Industry[77], provided that

(i) the number of extraordinary quota work permits issued in terms of this sub-regulation may not exceed the quota set out in such notice for each category set out in such notice;

(ii) in making its recommendation, the Board shall give due consideration to the objectives of the Act, and satisfy itself that certain intense needs of the economy require resorting to extraordinary quota work permits in terms of this paragraph rather than in terms of the other provisions of this regulation; and

(iii) the foreigner issued with an extraordinary quota work permit in terms of this paragraph shall be authorised to conduct work

(aa) even when at the time the permit is issued he or she does not have a prospective employer;

(bb) outside of such category, unless the Minister determines otherwise in such Notice;

(cc) without complying with the requirements set out in this regulation, save that within thirty calendar days of such foreigner becoming employed, sub-regulations (4)(a)(i), (4)(a)(iii) and (4)(b) shall be complied with *mutatis mutandis*.

(f) Subject to sub-regulation (4)(d)(iii), in the absence of extraordinary circumstances, compliance on the side of the relevant foreigner and his or her employer with their relevant respective obligations set out in sub-regulations (1) to (4) shall satisfy the Department that such foreigner's skills or qualifications match those required by the job position without need for further evaluations or assessment.

(g) In determining categories and general quotas in terms of section 19(1) of the Act, the Minister shall endeavour to provide for access to all foreigners potentially needed by the Republic's economy both at the lower and higher ends of the skills or qualifications spectrum, taking into account that often certain needed skills, such as entrepreneurship, craftsmanship or management, are not shown through qualifications, and, mindful of section 2(1)(b) and (j) of the Act, shall ensure that he or she determines quotas sufficiently large to ensure that in the absence of unforeseen circumstances the Department may issue work permits in terms of sub regulation (1) to (4) rather than (5) and (6).

(h) The unutilised portion of an annual quota for each category of general quota permits determined by the Minister shall carry over into the following year's quota for the same category, or for one determined by the Minister if the same category no longer exists, and general quota work permits shall be issued against such carried over balance from previous years, if any, before being issued against the current annual quota.[78]

(5) A foreigner may elect to apply for a general work permit contemplated in section 19(2) of the Act at any time, or may be directed to do so by the Department when a general quota permit is not available, provided that in both cases his or her permit application shall be deemed not to fall within a category contemplated in section 19(1) of the Act[79]. The manner in which the employer shall satisfy the Department as required under section 19(2)(a) of the Act shall be in the form of a letter, accompanied by documentary proof of the efforts made to obtain the services of a citizen or resident, including the original advertisement in the national print media, details of citizens and/or residents who applied and the reasons why they did not qualify[80].

(6) (a) The application for a general work permit envisaged in section 19(2) shall be dealt with in accordance with item 20 of Schedule A.

(b) The advertisement required in sub-regulation 28(5) shall be an original clipping from the relevant national[81] print media and shall comply with the following[82]

(i) the specimen must reflect the full particulars of the relevant newspaper/specialised magazine, as well as the dates on which the advertisement was published;

(ii) such advertisement must stipulate the minimum qualifications and experience required to fill the position as well as the remuneration and benefits offered;[83]

(iii) the position offered and the responsibilities to be performed must be clearly defined;

(iv) such advertisement should measure at least 60 millimetres by 60 millimetres[84];

(v) such advertisement shall be published at least for three weeks once a week[85];

(vi) the closing date for the application must be stated in the advertisement; and

(vii) the advertisement may not be older than 3 months at the time of application[86].

(c) Occupations not requiring advertising are set out in Schedule E[87].

(d) An employment contract referred to in column 4(c) of item 20 of Schedule A shall contain the signatures of both the employer and the employee and the applicable terms and conditions of employment.

(e) The employer shall submit the certification by a chartered accountant as required in section 19(2)(b) of the Act to the Department in support of the application, as well as to the relevant office of the Department of Labour.

(f) The employer shall produce independent and reliable certification of the foreigner's relevant skills, qualifications or experience and a statement explaining the correlation between the qualifications and requirements of the position and such foreigner's relevant skills, qualifications or experience, which certification may be included in the certification contemplated in section 19(1)(2)(b) of the Act.

(7) The application for and all aspects related to the application for and the issuance of an exceptional skills work permit as envisaged in section 19(4) of the Act shall be dealt with according to item 21 of Schedule A.[88]

(8) Unless otherwise determined by the Department under the circumstances of the case, the immediate family members of the holder of an exceptional skills work permit referred to in section 19(4) of the Act shall be those who are dependent on such permit holder, provided that the Department may issue an extended visitor's permit to other members of such permit holder's immediate family.

(9) The application for an intra-company transfer work permit referred to in section 19(5) of the Act shall be dealt with according to item 22 of Schedule A, provided that the requirement of being employed abroad shall be satisfied also when a foreigner, upon being transferred to the Republic, becomes employed by a person in the Republic on the basis of an intra-company transfer.

(10) The financial guarantee described in section 19(5)(c) of the Act shall be in the form of a deposit as stipulated in regulation 20, or an undertaking to the effect that the amounts envisaged in regulation 20 shall be paid to the Department in the event of the foreigner's deportation from the Republic.

(11) The measures required under sections 19(5)(b) and 21(2)(b)(i) of the Act shall be the following

(a) to ensure that the passport(s) of the foreigner/s are valid for no less than 30 days after the expiry date of the intended stay;
(b) to ensure that foreigners are only employed in the specific positions as authorised by the corporate permit; and
(c) to ensure the forthwith departure of such foreigners from the Republic on completion of their tour of duty.

(12) The office contemplated in section 19(2)(b)(i) of the Act shall be the office of the Regional Director of the Department of Labour competent in respect of the workplace where the foreigner intends to work.

(13) General work permits in terms of section 19(2) of the Act, exceptional skills and qualifications permit in terms of section 19(4) of the Act and extraordinary quota work permits in terms of section 19(1) of the Act read with sub-regulation (4)(e) may be issued for up to four years and renewed in terms of the Act and these Regulations, provided that for good cause they be extended without need for an application for renewal. General quota work permits in terms of section 19(1) of the Act read with sub-regulation (4)(a) shall be open ended and lapse as set out in the Act and these Regulations. Only for good cause an other intra-company transfer work permit may be issued to an applicant who held an intra-company transfer work permit immediately previously or within the previous four months from the date of application.[89]

Regulation 29
Retired Person Permit[90]

(1) The application for and other aspects relevant to the application for and the issuance of a retired person permit as referred to in section 20(1) of the Act, are set out under item 26 of Schedule A.

(2) The minimum payment required in section 20(1)(a) of the Act shall be a pension with a minimum value of R18 000-00 per month, or an irrevocable retirement annuity or retirement account to the equivalent amount, which may include up to R10 000-00 of the rental value of housing owned in the Republic, and used by, the applicant.

(3) The net worth envisaged in section 20(1)(b) of the Act shall be no less than R10 000 000-00 providing an income of at least R13 000-00 per month, which may include up to R10 000-00 of the rental value of housing owned in the Republic, and used by, the applicant.[91]

(4) The application for and other aspects relevant to the application for and issue of a retired person permit referred to in section 20(2) of the Act to enable such person to work, are as set out under item 27 of Schedule A.

(5) The authorisation to conduct work envisaged in section 20(2) of the Act may be granted for a period of three years but shall not exceed the validity of the permit.

(6) A retired person permit may be issued also when the applicant intends to stay in the Republic only for limited or seasonal periods during the validity of the permit.

(7) The financial requirements set out in sub-regulations (2) and (3) may be met by the combined resources of two spouses who apply jointly.

(8) Subject to item 26 or 27 of Schedule A, the spouse of the holder of a retired person permit qualifies for a retired person permit to be issued for the same period as the principal permit but subject to the condition of its lapsing three months after the spousal relationship terminates for any cause other than death.[92]

(9) The applicant may choose to provide proof of the financial requirements contemplated in section 20 of the Act and in this regulation by means of a certification of a chartered accountant.

Regulation 30
Corporate Permit

(1) The application for and other aspects relevant to the application for and the issuing of a corporate permit as envisaged in section 21(1) of the Act are as set out under item 28 of Schedule A.[93]

(2) When processing an application for a corporate permit, the Department shall consult with the corporate permit applicant to discuss
(a) the best modalities under the specific circumstances which may ensure the success of the corporate permit;

(b) the capacity of the corporate employer to manage the administrative requirements of the programme and any desirable improvements thereof; and

(c) how the Department may best fulfill the objectives of the Act in the specific case.

(3) The application for and other aspects relevant to the employment of a foreigner in terms of the corporate permit envisaged in section 21(1) of the Act are as set out under item 23 of Schedule A.

(4) The application for and other aspects relevant to a foreigner employed in terms of a corporate permit issued in pursuance of an agreement with a foreign state are as set out under item 24 of Schedule A.

(5) The application for and other aspects relevant to a foreigner employed in terms of the corporate permit, in respect of seasonal or temporary peak employment are as set out under item 25 of Schedule A.

(6) The measures required under section 21(2)(b)(i) of the Act shall be those set out under sub-regulation 28(11).

(7) The financial guarantees required under section 21(2)(c) of the Act shall be those referred to in regulation 20.

(8) Mindful of the objectives of the Act, the Department shall determine the maximum number of foreigners to be employed in terms of a corporate permit by a corporate applicant and, in general, their type of positions, after having considered the requirements set out in section 21(2)(b) of the Act and

(a) the training programme provided by the corporate applicant for citizens and residents aimed, to the satisfaction of the Department, at reducing the corporate applicant's dependency on foreign labour and/or at transferring skills from foreigners to residents and citizens, if any; and/or

(b) the aggregate training fee[94] which shall be paid by the corporate applicant as determined by the Department, which shall

(i) not exceed the approximate sum of the training fees such corporate applicant would be liable to if permits were to be issued in terms of section 19(1) of the Act read with regulation 28(3);

(ii) be reduced in consideration of the training programme referred to in paragraph (a), if any;

(iii) be reduced or waived when so requested by the Minister of Trade and Industry, or Minerals and Energy, or Agriculture, or Labour, as the case may be, especially to facilitate foreign investments, or accommodate industries or businesses, such as mining, when special economic circumstances exist, or for good cause, especially in respect of meritorious not-for-gain corporate applicants; and

(iv) be capable of being increased in respect of a work permit issued under such corporate permit only after five years and six months from when such work permit was first issued, provided that subsequent work permits issued to the same foreigner shall be deemed one for purposes of this item; and

provided that after consultation with the Department, the corporate applicant may elect to pay such fee without providing the training programme contemplated in paragraph (a), or may seek agreement with the Department for a combination of such a fee reduced in terms of item (ii) and a less than optimal measure of such training programme.

(9) The holder of a corporate permit shall supervise the completion of the application of each person who is to receive a work permit under such corporate permit and transmit each of such applications to the Department together with its certification that to the best of its knowledge such application is consistent with the terms and conditions of such corporate permit, the Act and these Regulations, in which case, within fifteen days the Department shall

(a) issue to such person a work permit under such corporate permit, subject to such person being admitted, and agreeing to the terms and conditions of such corporate permit; or

(b) notify such holder of a corporate permit of any defect in the application or of its determination that the application is inconsistent with the terms and conditions of such corporate permit, the Act or these Regulations, including any identified security consideration.

(10) (a) The validity of work permits issued in terms of a corporate permit shall be as follows

(i) not exceeding six months, in respect of foreigners employed as seasonal workers or for the purpose of peak period employment;

(ii) not exceeding eighteen months in respect of foreigners employed in terms of agreements with foreign states; and

(iii) not exceeding three years for all other categories

after which subsequent applications may be lodged in respect of item (iii) on condition that the corporate permit holder certifies that the foreigner is still employed under the same conditions of employment and job description, and in compliance with these Regulations and the Act.

(b) A corporate permit shall lapse if, within three years of its issuance, and within three years there after, its holder fails to renew its chartered accountant's certification contemplated in section 21(2)(a) of the Act, or at any time there is a material failure to make the payments and/or conduct the training programme referred to in sub-regulation (8) as the case may be, when such failure is not remedied within thirty days of the receipt of a request from the Department to correct it.

(11) (a) The following circumstances shall constitute good cause for the Department to withdraw or modify the corporate permit

(i) a change in the material aspect taken into consideration at the time of issuing of the permit;

(ii) incorrect or false information submitted by the corporate applicant on application or at any time thereafter;

(iii) failure to comply with the Act or permit conditions.

(b) In addition to other grounds set out in the Act or in these Regulations, the following circumstances shall constitute good cause for the Department to withdraw or modify a work permit issued in terms of a corporate permit

(i) notification from the corporate applicant that the relevant foreigner is no longer in compliance with the Act or the conditions of his permit or is no longer employed; and

(ii) notification from the corporate applicant regarding changes in the internal structuring of the company or position of the foreigner within the company.[95]

(12) For the purposes of sections 21(4)(a),(c) and (d) of the Act, the Government shall be represented by the Department.

(13) Permits issued under a corporate permit do not fall within the limits of, and shall not be deducted from, the quotas contemplated in section 19(1) of the Act.

(14) At the request of a corporate permit holder, the Department shall issue a number of certificates, substantially containing the information set out in Annexure 53, equal to the number of foreigners authorised in terms of the corporate permit, so as to facilitate the application for work permits under such corporate permit and for record keeping.

Regulation 31
Exchange Permit

(1) The application for and other aspects relevant to the application for and the issuance of an exchange permit as envisaged in section 22(a) of the Act, are as set out under items 29 and 30 of Schedule A.

(2) The programmes in respect of which the holder may not qualify for a subsequent status, as envisaged in section 22(a)(ii) of the Act, shall be those in respect of which such holder cannot obtain a no-objection letter from the organ of State responsible for such programme or with responsibility in the field in which the non-governmental institution responsible for such programme operates. The period of physical presence abroad contemplated in section 22(a)(ii) of the Act shall be two years.[96]

(3) The application for and other aspects relevant to the application for and the issuance of an exchange permit as envisaged in section 22(b) of the Act, are as set out under item 31 of Schedule A.

(4) A permit envisaged in section 22(b) of the Act shall only be considered if the prospective employer guarantees the applicant's repatriation and undertakes to report to the Department the earlier termination of employment, provided that when an exchange is sponsored by an organization which, upon application to the Director-General, has received accreditation with the Department, such guarantees may be waived.

Regulation 32
Asylum Permit

(1) All aspects relevant to the issuance of an asylum permit as envisaged in section 23 of the Act are as set out under item 32 of Schedule A.[97]

(2) An immigration officer may[98] issue an asylum permit in terms of section 23 of the Act to an asylum seeker at a port of entry, to enable such an asylum seeker to report to a Refugee Reception Office in terms of the Refugees Act, 1998 (Act No. 130 of 1998) within a period of 14 days for the purpose of section 21(1) of such Act.[99]

(3) The validity of the asylum permit issued to an asylum seeker may not be renewed and shall lapse upon the issuance of a permit in terms of section 22 of the Refugees Act, 1998 (Act No. 130 of 1998), or when its holder leaves the Republic.

Regulation 33
Permanent Residence

(1) The application for a permanent residence permit envisaged in section 25(2) of the Act and other aspects relevant to the application and the issuance thereof envisaged in sections 26 and 27 of the Act are set out under items 34 to 48 of Schedule A and Annexure 24[100].

(2) Any resident who loses his or her residence for whatever reason shall relinquish and surrender to the Department his or her non-citizen South African identity documents issued in terms of the Identification Act, 1997 (Act No 68 of 1997).[101]

(3) Any permanent residence permit issued in terms of sections 26 and 27 of the Act shall lapse and the holder of the relevant permit shall be deemed to be an illegal foreigner if the holder of such a permit materially contravenes any terms and/or conditions attached thereto in terms of section 25(4) of the Act or has made any material misrepresentations in order to obtain such a permit.

(4) A good faith spousal relationship shall be a relationship that was not entered into primarily for the purpose of gaining benefits under the Act and shall be confined to a relationship of two persons calling for cohabitation and intended to be permanent.[102]

(5) The Department may at any time satisfy itself as envisaged in section 26(b)(i) of the Act whether a good faith spousal relationship exists by
- (a) interviewing the applicant and spouse separately;
- (b) contacting family members and verifying other references;
- (c) requesting proof of actual or intended co-habitation; or
- (d) inspection in loco of the applicant's place of residence.[103]

(6) in order to determine whether a good faith spousal relationship subsists, the Department may, by means of a condition attached to the permit, require the permit holder and the citizen or resident spouse to
- (a) arrange a date for an appointment with the Department within the three year period following the date of issuance of the permit, but before applying for a certificate of naturalisation in terms of the South African Citizenship Act, 1995 (Act No 88 of 1995);
- (b) submit to the Department the confirmation prescribed in Annexure 1 Part I and Part II when arranging the appointment referred to in paragraph (a);
- (c) present themselves at the agreed upon office of the Department, unless the Department decides in the specific case that an appointment is not required; and
- (d) identify themselves by means of an identity document or a passport and present any relevant documents the Department has previously requested them to produce.

(7) The Department shall endeavour to issue a permanent residence permit within thirty days of its having received a complete application, except when the applicant requests the Department to verify facts which could form the object of a chartered accountant's certification[104]. A Regional Director shall provide the Board and the Director General with a bi-yearly report indicating how many applications were not finalized within thirty days and the reasons therefor.

(8) In verifying whether an applicant is of good and sound character as envisaged in section 27 of the Act, the Department shall take into account any information the applicant may adduce in that respect and other objective and corroborated information[105], provided that the Department
- (a) may make enquiries only into matters relevant to whether the applicant is
  - (i) law abiding; and
  - (ii) in the habit of fulfilling his or her legal obligations;
- (b) may not inquire into, or take into account, any matter falling within the sphere of preferences or activities which the law allows to be decided by means of a personal choice, including but

not limited to any of the grounds referred to in section 9(3) of the Constitution of the Republic of South Africa, 1996 (Act No 108 of 1996);

(c) shall convey any relevant adverse information it has to the applicant and offer him or her the opportunity to respond or counter it;

(d) may request the applicant to provide any further relevant information;

(e) shall deem an undesirable person not to be of good and sound character, unless the Minister directs otherwise and subject to section 30(2)of the Act;

(f) subject to paragraphs (d) and (e), shall consider the applicant to be of good and sound character on the basis of the applicant's written assertion that he or she satisfies the test set out in sub-regulations (a)(i) and (ii) in the absence of information to the contrary; and

(g) subject to paragraphs (a) to(c), may take into account information received via official channels, interdepartmental enquiries and official records.[106]

(9) The certification required in section 27(a)(i) of the Act in relation to the advertisement shall confirm compliance with the requirements of sub-regulations 28(5) and 28(6).

(10) The yearly limits contemplated in section 27(a)(iii) of the Act shall be as follows:[107]

(a) 5 000 in respect of the clothing and textile industry professions;

(b) 12 000 in respect of chemicals and biotechnology professions;

(c) 12 000 in respect of information and communication technology professions;

(d) 10 000 in respect of tourism professions;

(e) 15 000 in respect of academic research professions;

(f) 10 000 in respect of teaching professions;

(g) 50 000 in respect of other professions; and

(h) 150 000 in respect of other activities which, considering the nature of the qualification, training and experience required, if any, cannot be regarded as a profession,

provided that a working activity shall be regarded as a profession when the relevant employer or the industry standard or any law or regulation requires a graduate degree or at least ten years practical experience or a diploma together with at least three years practical experience for its exercise.

(11) The requirements envisaged under section 27(b) of the Act shall be those stipulated under item 41, column 4 of Schedule A.

(12) The immediate family of the foreigner envisaged in section 27(b)and (c) of the Act shall be those referred to in regulation 28(8).

(13) The financial contribution envisaged in section 27(c) of the Act shall be the amount specified in sub-regulation 24(2)(a).

(14) The requirements stipulated under section 27(c) of the Act shall apply *mutatis mutandis* to the categories listed in items 42, 43 and 44 of Schedule A and the applications for and other aspects pertaining thereto shall be as set out in the relevant items.

(15) The requirements envisaged under section 27(d) of the Act shall be those stipulated under item 45, column 4 of Schedule A.

(16) The certification envisaged under section 27(e) of the Act shall show compliance with the criteria and requirements set out in regulation 29(2) and (3).

(17) The extension of a permit to an applicant's spouse and children as envisaged in section 27(a)(iv) of the Act shall apply *mutatis mutandis* to applications under sections 26 and 27(d) to (f) of the Act.

(18) The application for, all matters pertaining to the application for and the issuance of a permit, as well as the minimum net worth and amount envisaged in section 27(f) of the Act shall be as set out in item 47 of Schedule A.[108]

(19) The application for, and all matters pertaining to the application for and the issuance of a permit envisaged in section 27(g) of the Act shall be as set out in item 48 of Schedule A.[109]

(20) The provisions of section 27(g) of the Act shall not apply to a relative of a citizen or a resident who himself or herself obtained residence in terms of that section of the Act.

(21) The relatives of a citizen or resident envisaged in section 27(g) of the Act shall be confined to biological or judicially adoptive parents, biological or judicially adopted children or a spouse.

(22) When a foreigner envisaged in section 27(g) of the Act is the parent of a minor citizen or resident, a permanent residence permit may be issued

(a) notwithstanding a lack of good and sound character; and
(b) under the condition that it shall automatically lapse one year after such minor turns 21 years of age, permanently departs from the Republic, is legally adopted or dies, provided that such foreigner may at any time prior to such lapsing apply for a permit in terms of section 27(g) or another applicable section of the Act.

(23) The application envisaged in section 27(c)(i) of the Act shall be in the form of a written request, fully motivating the reasons for such a request and the Department shall decide on it after consultation with the Department of Trade and Industry.

(24) The offices of the Department of Labour to be approached in respect of section 27(a)(ii) of the Act shall be those contemplated in regulation 28(12).

(25) a resident or other person may request in writing to the department to provide a determination of his or her status as a resident or other status holder.

(26) Should for any reason the Department be unable to process a complete permanent residence application of a spouse of a citizen or resident within the time period contemplated in sub-regulation (7), on application, the Department shall, pending the processing of such application, issue such spouse with
(a) a work permit in terms of section 19(2) of the Act but only on the basis of the requirements and documentation contemplated in regulation 28(6)(d), or
(b) a study permit subject to these Regulations
provided that such permit shall ipso facto lapse on the Department's rejection of such application.

Regulation 34
Prohibited Persons

(1) (a) The infectious diseases envisaged in section 29(1)(a) of the Act shall be those diseases referred to in the regulations promulgated in terms of the International Health Regulations Act, no 28 of 1974 and any other disease as determined by the Department of Health from time to time by public notice in the Government Gazette to be issued in terms of this sub-regulation.
(b) A person who has, within the preceding 6 days, been in or transited through a yellow fever endemic area as identified in Schedule I shall be deemed to be infected with yellow fever unless in possession of a valid yellow fever vaccination certificate, which certificate shall be valid for a period of 10 years from 10 days after the date of immunization or re-immunization[110].
(c) A person suspected of being infected with a disease contemplated in sub-regulation (a) or a person contemplated in sub-regulation (b) shall be referred to the port health officer to determine admissibility.
(d) Where a port health officer is not present at the port of entry, a person contemplated in item (c) shall be refused admission, unless, except when yellow fever is concerned, a qualified medical practitioner certifies that such person is not infected with a disease contemplated in item (a).

(2) The rehabilitation, envisaged in section 29(1)(c) of the Act, of anyone previously deported shall take place by means of and after
(a) the person concerned swearing or making a solemn affirmation that he or she will comply with the Act;
(b) the Department having no good cause to believe that such person is likely to violate the Act again; and
(c) four years absence from the Republic; or
(d) a forfeiture to the State of R50 000-00 to be reduced to R 2 000-00 when such person previously paid for the cost of his or her deportation as well as all costs related thereto and
provided that any person so rehabilitated shall be deemed not exempted from visa requirements to enter the Republic.

(3) When a person envisaged in section 29(1) of the Act is outside the Republic and wishes to be declared not to be a prohibited person as envisaged in section 29(2) of the Act, such person shall submit a request to this effect from abroad and await its outcome before proceeding to the Republic.

Regulation 35
Undesirable Persons

(1) The Department may declare any of the persons listed under sections 30(1)(a) to (g) of the Act undesirable as envisaged in section 30(1) of the Act by means of a form substantially containing the information contained in Annexure 26, provided that, where such declaration will adversely affect the foreigner concerned, the Department shall notify such foreigner
   (a) that it intends to declare him or her an undesirable person;
   (b) of the reason or information on which it relies; and
   (c) of his or her rights in terms of section 8 of the Act.[111]

(2) The Department will have discharged its responsibility in terms of sub-regulation (1)(a), (b) and(c) by handing over such notification or by forwarding it to the last known address of the person referred to in sub-regulation (1), unless such person requested to receive communication at a different address or care of a given person, in which case notification to such address and/or person shall apply.

(3) The offences envisaged in section 30(1)(g) of the Act shall be any offence, except those listed in Schedules 1 and 2 of the Act, in respect of which a sentence was served more than seven years prior to the date on which the relevant application with the Department is lodged as well as traffic offences or offences based on strict or vicarious liability.

(4) The application envisaged in section 30(2) of the Act shall be in the form of a written request, fully motivating the reasons for such a request.

(5) When, in exercising the power contemplated in section 30(1)(b) of the Act, the Minister identifies the persons mentioned in such section as a category or as the citizens or nationals of a foreign country, the Minister may make provisions for the granting on an individual basis of exceptions from such classification as the Minister sees fit.

Regulation 36
Exemptions

(1) The application envisaged in section 31(2)(a) of the Act shall be in the form of a motivated written or verbal request.

(2) The application envisaged in section 31(2)(b) of the Act shall be in the form of a written request fully motivating the reasons for and the special circumstances that gave rise to the request.

(3) The application for and all aspects related to the application for and the issuing of the authorisation envisaged in section 31(2)(c) of the Act are set out in item 3 of Schedule A.

(4) For good cause the Director-General may condone the failure on the side of an applicant to meet a deadline set forth in these Regulations.[112]

Regulation 37
Illegal Foreigners

(1) Any illegal foreigner to be deported from the Republic as envisaged in section 32(2) of the Act, shall
   (a) if he or she is the holder of a passport issued by any foreign country or territory be deported to the country or territory of which he or she is a citizen; or
   (b) if he or she is not the holder of such a passport, or is stateless[113], be deported to the country or territory where he or she has a right of domicile or residence.

(2) The Department shall endeavour to record the identity and fingerprints of those who are deported, provided that when an illegal foreigner arrested in terms of section 34(1) of the Act elects to leave the Republic in terms of regulation 39(17), such illegal foreigner shall not be recorded as having been deported unless he or she was previously deported, dealt with in terms of regulation 39(17), or otherwise violated the Act.

Regulation 38
Inspectorate[114]

(1) The Inspectorate envisaged in section 33 of the Act is hereby established as the Immigration Inspectorate and will consist of the divisions and subdivisions as determined by the Minister.

(2) The Inspectorate shall investigate any matter falling within the scope of the Act, and these Regulations including the enforcement of, and any actual or planned violation of, the Act and these Regulations,

(3) The procedures envisaged in section 33(3) of the Act shall be as determined in the relevant sections of this Act and the Criminal Procedure Act, 1977 (Act No 51 of 1977) to which end members of the Inspectorate shall be deemed to be also peace officers[115].

(4) The notices referred to in sections 33(4)(b) and(c) of the Act shall be in the form of and substantially contain the information set out in Annexure 27 and 28 respectively.

(5) The warrant referred to in section 33(5) of the Act shall be in the form of and substantially contain the information set out in Annexure 29.

(6) The receipt referred to in section 33(5)(c) of the Act shall be in the form of and substantially contain the information set out in Annexure 30.

(7) The identification contemplated in section 33(14) of the Act shall be the appointment certificate specified in sub-regulation 4(2)(b).

Regulation 39

Deportation and Detention of Illegal Foreigners

(1) The notification referred to in section 34(1)(a) of the Act shall be in the form of and substantially contain the information set out in Annexure 31.[116]

(2) The Court warrant contemplated in sections 34(1) and 34(5) of the Act shall be in the form of and substantially contain the information set out in Annexure 32. When, in terms of sections 34(1), 34(5) or 34(8) of the Act, an illegal foreigner is detained without a Court warrant, such illegal foreigner shall be detained pursuant to an administrative warrant in the form of and substantially containing the information set out in Annexure 32A.

(3) On arrest, an illegal foreigner shall be informed of his or her rights in terms of section 35 of the Constitution of the Republic of South Africa, 1996 (Act No 108 of 1996).

(4) In cases where the 30-day period referred to in section 34(1)(d) of the Act expires on a day which is not a court day, such period shall be deemed to expire on the first subsequent court day.

(5) 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) serve on the detainee the notification of his or her intention as contained in Annexure 33, not later than the 23rd day after the arrest;

(b) afford the detainee the opportunity to make representations in this regard within 3 days of the notification envisaged in sub-regulation (a); and

(c) lodge an application substantially as set out in Annexure 34 for the extension of the period of detention with the clerk of the Court not later than the 28th day after arrest.

(6) The magistrate shall make his or her decision known to the Department not later than the 30th day after arrest, or in cases where the 30th day is not a court day, on the first subsequent court day.

(7) The minimum prescribed standards envisaged in section 34(1)(e) of the Act shall conform to the Constitution and those prescribed in the Correctional Services Act, 1998 (Act No 111 of 1998).[117]

(8) The detention of a person referred to in section 34(2) or 41 of the Act shall be pursuant to an administrative warrant in the form of and substantially containing the information set out in Annexure 35.

(9) An immigration officer, when enforcing payment of the deposit envisaged in section 34(3) of the Act, shall

(a) serve an order on the illegal foreigner concerned to deposit the required amount. Such order shall be in the form of and substantially contain the information set out in Annexure 36; and

(b) after having endorsed the order to the effect that the deposit has not been paid, file a copy of the order at the office of the clerk of the Court of the district in which such illegal foreigner is detained pending his or her removal and thereafter such order shall have the effect of a civil judgment of the Court and the immigration officer shall have all the powers of a judgment creditor.

(10) The lawful authority envisaged in section 34(5)(a) of the Act shall be applied for after compliance with the stipulations of sub-regulation 34(2) and the application for and other matters related to the application for and issuing of this authority shall comply with the stipulations of item 49 of Schedule A. The lawful authority envisaged in section 34(5)(a) of the Act shall be in the form of a visa as envisaged in section 11(1)(a) of the Act.

(11) The provisions of section 34(5)(b) of the Act shall not apply to a foreigner who has been admitted to the Republic in terms of this Act subsequent to the refusal of his or her admission.

(12) The warrants of removal or release contemplated in section 34(7) of the Act shall be in the forms that substantially contain the information reflected in Annexure 37 and 38 respectively.

(13) The notification to the illegal foreigner and the declaration to the master of a ship respectively referred to in section 34(8) of the Act shall be in the form of and substantially contain the information reflected in Annexure 39 and 40.

(14) The amount which the owner of a ship shall forfeit in terms of the provisions of sections 34(9)(a) and (d) of the Act in respect of each person shall be determined by the highest ranking immigration official at the port of entry at the time and shall not exceed R10 000-00.

(15) The deposit envisaged in section 34(9)(b) of the Act and the limit envisaged in section 35(4) of the Act shall be calculated in accordance with the provisions of regulation 20, provided that, if the deposit is in respect of a stowaway, the master or owner shall pay an additional handling fee of R2 500-00 to the Department in respect of each stowaway.

(16) The certificate by an immigration officer envisaged in section 35(6) of the Act shall be in the form of and substantially contain the information set out in Annexure 41.

(17) If an illegal foreigner who is to be deported, undertakes to leave the Republic as required in section 32(1) of the Act, an immigration officer may instruct such illegal foreigner to depart from the Republic on a date specified, which shall not be more than 14 days after the date of issue of the order, provided that

(a) such date may, for good cause shown, be extended,

(b) such immigration officer may elect not to detain such an illegal foreigner pending his or her deportation,

(c) such immigration officer may exact a guarantee in terms of regulation 20 refundable upon departure,

(d) such order shall be in the form of and substantially contain the information set out in Annexure 42, and

(e) a departure in terms of this sub-regulation shall not be deemed to be a deportation, unless the illegal foreigner was previously deported, made a departure in terms of this sub-regulation, or otherwise violated the Act.

Regulation 40
Ships

The lists required under sections 35(3)(a) to(c) of the Act and the return required under section 35(3)(d) of the Act shall be in the form of and substantially contain the information set out in Annexure 43, 44, 45 and 46 and these lists shall also be delivered upon demand to an immigration officer by the master of a ship departing from a port of entry.

Regulation 41
Duties and Obligations

The records envisaged in section 38(4) of the Act shall be the following

(a) a certified copy of the foreigner's passport reflecting his or her personal particulars;

(b) a copy of the foreigner's status; and

(c) proof of the capacity in which the foreigner is or was employed and, *inter alia*, his or her job description.[118]

Regulation 42
Accommodation

(1) The identification of customers as citizens or status holders envisaged in section 40(1) of the Act shall be by perusal of either their identity documents or passports of such customers.

(2) The report referred to in section 40(1) of the Act shall be in the form of and substantially contain the information set out in Annexure 47 and shall be submitted at an office of the Department nearest to the physical address of the overnight accommodation on the first working day after the day on which the person whose status could not be ascertained received such accommodation.

Regulation 43
Identification

(1) (a) An immigration officer may subject a person envisaged in section 41 of the Act to an examination, which may include interrogation, photographing and fingerprinting, aimed at satisfying the immigration officer of
  (i) the nationality or status of such a person;
  (ii) the person's identity and right to enter and sojourn in the Republic;
  (iii) the person's compliance with the Act and these Regulations; and
  (iv) whether such a person is, has become or is likely to become
    (aa) an illegal foreigner;
    (bb) a prohibited person; or
    (cc) an undesirable person

provided that failure on the part of such a person to subject himself or herself to the above examination, may, for good cause, cause such person to be dealt with as an illegal foreigner.

(b) An immigration officer may require a foreigner suspected of being afflicted with a disease contemplated in regulation 34(1)(a) to submit to an examination by a medical practitioner designated by the Director-General, which examination shall take place as soon as possible at a place determined by the immigration officer.

(2) Where a person envisaged in section 41 of the Act is detained by a police officer, such police officer shall within 24 hours bring such person before an immigration officer. The immigration officer shall comply with the provisions of section 34(2), provided that the maximum period of detention envisaged in that section shall commence at the time of the first arrest. Where the warrant referred to in sub-regulation 39(8), accompanied by the affidavit included therein, is not provided, or does not substantiate reasonable grounds for detention, the immigration officer shall not accept such a person into his or her custody.

Regulation 44
Organs of State

The report referred to in section 44 of the Act shall be in the form of and substantially contain the information contained in Annexure 48.

Regulation 45
Other Institutions

(1) The institutions and persons envisaged under section 45 of the Act shall be the following
  (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) The commercial transactions envisaged in section 45 of the Act shall be
  (a) in respect of sub-regulation 1(a) loans and bonds, money transfers and the opening of accounts, excluding investment accounts;
  (b) in respect of sub-regulation 1(b), facilitation of the purchase, sale, leasing or renting of fixed property or the facilitation of the purchase of insurance policies of any nature;
  (c) in respect of sub-regulation 1(c), when admitting or registering a patient except in emergencies; and
  (d) in respect of sub-regulation 1(d), when approached by, or referring, a work seeker.

(3) When reporting any illegal foreigner as envisaged in section 45 of the Act, the institution or person envisaged in sub-regulations (1) and (2) shall do so in writing, provided that if the time required to prepare such written report would defeat the purpose of the Act, such illegal foreigner may in the interim be reported to the Department verbally.

Regulation 46
Immigration Practitioners

(1) The application for registration as an immigration practitioner, the required qualifications and registration fee and duty envisaged in section 46 of the Act are contained in Schedule F.[119]

(2) Persons conducting trade abroad which only incidentally and partially involves the trade referred to in section 46(1) of the Act, and travel agents in the Republic and abroad in respect of activities connected to their services or products, shall be deemed not to be conducting the trade referred to in section 46(1) of the Act.[120]

(3) The Department shall if requested to give such advice, or in respect of posters placed in its offices, advise all prospective applicants that
   (a) they have the right to apply and follow their application directly and without representation;
   (b) they have the right to representation in respect of their application or dealings with the Department through an attorney, advocate or immigration practitioner;
   (c) the Department takes no responsibility for the choice the applicant makes in respect of (a) or (b),
   (d) the Department shall treat and deal with all applications on an equal footing, without any preference or bias, and irrespective of whether an applicant is or is not represented, and
   (e) the Department may not recommend any attorney or immigration practitioner nor give out any of their names or contact details, provided that the Department may direct anyone to general listings or reference resources where such information may be acquired.

Regulation 47
Administrative Offences

(1) The administrative fine envisaged in section 50(1) of the Act shall be the following and shall also apply to a person referred to in section 26(7) of the previous Act
   (a) in respect of a foreigner who leaves the Republic more than 5 days but less than 30 days after the expiry of his/her permit, an amount of R1 000-00
   (b) in respect of a foreigner who leaves the Republic more than 30 days after the expiry of his or her permit, but less than 3 months after such expiry, an amount of R1 500-00; and
   (c) in respect of a foreigner who leaves the Republic after the expiry of his or her permit, but more than 3 months after such expiry, an amount of R3 000-00.

(2) The administrative fine envisaged in section 50(2) of the Act shall be R7 000-00.

(3) The administrative fine envisaged in section 50(3) of the Act shall be R10 000-00.

(4) When enforcing payment of the administrative fines envisaged in sections 50(1), (2) and (3) of the Act
   (a) the Department shall notify the transgressor of the fine imposed on a form which will substantially contain the information set out in Annexure 49[121], 50 and 51 respectively;
   (b) in the event of the fine referred to in sub-regulation (1) not being paid, the foreigner shall not be admitted to the Republic, or issued with a visa or permit, or, if already admitted, a permit shall not be renewed nor a subsequent permit issued;
   (c) in the event of an administrative fine referred to in sub-regulation (2) not being paid, the Department shall file a copy of the notice at the office of the clerk of the Court of the district in which the debtor is based, where-after such notice shall have the effect of a civil judgment of the Court and the Department shall have all the powers of a judgment creditor; and
   (d) in the event of a fine imposed in terms of sub-regulation (3) not being paid, the immigration officer may elect not to issue the certificate envisaged in section 35(6) of the Act.

(5) A person adversely affected by section 50(1) of the Act may petition the Director-General for a determination that circumstances existed which made such person not culpable under such section.

Regulation 48
Transitional Provisions [122]

(1) Subject to these Regulations, anything done or purported to be done under, or in terms of, the Immigration Regulations published in General Notice 487 of 2003 (Government Gazette No. 24952) of February 21, 2003 shall be deemed having been done under and in terms of these Regulations and any actual or purported legal effect flowing from such regulations shall be deemed to flow from these Regulations as if these Regulations came into force and effect at 18h00 of April 7, 2003, provided that

(a) Public Notice made in terms of the regulation 28(3) of the regulations made in terms of section 52 of the Act, relating to the collection of the training fee shall be deemed to be amended by
  (i) substituting the words "in advance" appearing in item 1 with the words "in arrears",
  (ii) substituting item 2 with the following item:
    "2. The training fee in respect of a relevant temporary residence permit shall become due by the employer upon notification by the Department that the relevant permit has been approved and the commencement of the relevant employment, and shall be payable in arrears as set out in the Immigration Regulations. The employer shall be responsible to deliver to the Department the deposit slip indicating that the fee has been paid into the abovementioned account."
  (iii) substituting the word "commencement" appearing in item 4 with the words "the end", and
  (vi) deleting item 5.

(b) the Public Notice made in terms of regulation 28(3) of the regulations made in terms of section 52 of the Act relating to quotas shall be deemed to be renewed and effective as per the date of commencement of these Regulations.

(2) (a) The credit card facility contemplated in regulations 10(2)(a) and 19(3) and
(b) the provisions of regulations 10(2)(a) and 10(2)(b)
shall become effective only twelve months after the date of commencement of these Regulations.

(3) Subject to (1), the Immigration Regulations published in General Notice 487 of 2003 (Government Gazette No.24952) of February 21, 2003 are hereby repealed

(4) No period of absence contemplated in section 28(c) of the Act shall be computed as accruing from before April 7, 2003.

(5) Two years from the date of the commencement of these Regulations, the guarantees contemplated in regulation 20 may be provided by means of bank, commercial or insurance guarantees in the form and from institutions approved by the Director General.[123]

Regulation 49
Permits existing prior to April 7, 2004

(1) Any application made for any permit in terms of the previous Act which has not been finalised at the commencement of these Regulations shall be deemed to have been lodged in terms of the Act and these Regulations and shall be decided on in terms of the Act and these Regulations, provided that
  (a) an application lodged under the previous Act may either be withdrawn if resubmitted prior to June 7, 2004, or supplemented and/or modified by the applicant without prejudice so as to adjust it to the relevant requirements or different permit grounds of the Act and these Regulations prior to its consideration; or
  (b) the applicant may request that the application be dealt with under the previous Act, provided that where the applicant has not made such a request, the Department shall approve such application under the previous Act when it can be so approved without violating the Act; and[124]
  (c) where an application has not been supplemented or modified or dealt with as envisaged in sub-regulation (a) the Department shall not reject such application, if such application would have complied with the previous Act and the regulations and prescripts made there-under, until the applicant has been notified of the provisions of sub-regulation (a) and given a period of 30 days to elect to resort to such provisions. If the applicant does not supplement or modify the application within the given period, the application shall be considered as if it was an application made under the Act.

(2) Any pending appeal lodged with the Central Committee of the Immigrants Selection Board under the previous Act, shall be decided on by the Department in terms of the previous Act, and the Department's decision shall be deemed to be a decision of the Immigrants Selection Board but shall be subject to section 8 of the Act.

Regulation 50
Miscellaneous[125]

(1) Any visa or temporary or permanent residence permit issued on the basis of false material information or an omission to provide required or reasonably expected material information shall be deemed to be null and void, provided that the Department shall

(a) notify the person concerned of its findings and the related consequences including, if applicable, the loss of status; and

(b) give the person concerned a reasonable opportunity to rectify the matter, if the matter can be easily rectified and the Department is satisfied that no fraud or fraudulent intent was involved, failing which paragraph (a) shall apply; or

(c) declare such consequences as having occurred and notify the person concerned of the rights set out in section 8 of the Act.

(2) In the case of a permanent residence permit, sub-regulation (1) shall apply only if the notification referred to in sub-regulation (1)(a) is sent to the last known address of the person concerned or his or her chosen representative of record within seven years of the issuance of such permit.

(3) In order to fulfil its responsibility of controlling the borders as set out in section 36(1) of the Act, the head of the Inspectorate or the Director-General may request other organs of State, *inter alia* the South African National Defence Force and the South African Police Service, to provide the assistance contemplated in such section of the Act, by, *inter alia*,

(a) conducting activities under the direction of the Department, including but not limited to border patrolling or investigations anywhere in the Republic; or

(b) seconding facilities, personnel or suitable equipment to the Department,

provided that

(c) any activity related to the enforcement of the Act and these Regulations shall be conducted in the presence of, under the direction of, or be immediately reported to an immigration officer appointed by the head of the Inspectorate to be in charge thereof; and

(d) any person arrested shall be brought and surrendered to an immigration officer as soon as possible.

(4) When possible and available and subject to available resources, the Department shall endeavour to inform any person held in detention in terms of the Act, and who does not understand one of the official languages of the Republic, of his or her rights in a language he or she understands by means of an interpreter who shall depose to an affidavit substantially containing the information set out in Annexure 57.

(5) The delegation from a chartered accountant to an accountant other than chartered accountant referred to in section 1(1)(v) of the Act shall be substantially in the form and contain the information set out in Annexure 58[126].

(6) No requirement in addition to, or exceeding those set out in these Regulations may be imposed on any person in respect of any matter or procedure dealt with or contemplated in these Regulations or in the Act.

(7) In rendering certifications in terms of the Act or in terms of these Regulations a chartered accountant may indicate that he or she has reasonably relied on an affidavit of a person with knowledge or expertise on the matter.[127]

(8) (a) The medical report referred to in these Regulations shall be a certification by a qualified medical doctor that he or she has examined the applicant or the person concerned and found him or her not to have any infectious disease, except those which are commonly curable and present no threat to public health. The medical certificate shall also list any physical or mental ailment of a chronic, likely to recur or serious nature. The medical certificate shall indicate whether the doctor has relied on blood or radiological tests and, if not, why such tests where not conducted, provided that radiological tests shall not be required in the cases of pregnant women and children under the age of 14.[128]

(b) The police certificate referred to in these Regulations shall list criminal conviction, outstanding warrants for arrest and pending criminal actions before a court of law, where such information is available and capable of been routinely obtained from the authority of the country concerned, failing which shall consist of another document issued by the authority of the country concerned carrying the information which, to greatest extent feasible or accessible under the

circumstances, nears such a requirement, provided that police certificates shall not be required in respect of the first 18 years of life of the person concerned. [129]

(9) At the request of a person concerned, the Department shall translate and make available to him or her any of the attachments to, or other provision of these Regulations in any of the languages set out in section 6(1) of the Constitution.

(10) (a) The unit referred to in section 47(1) of the Act shall
- (i) be headed by a person appointed by the Minister
- (ii) have the power to request information from any person employed or contracted by the Department, and
- (iii) perform the functions set out in section 47(1) of the Act, including in them supervising that conditions of detention under the Act complies with the provisions of the Act and these Regulations.
- (iv) be present and operate in each Region as well as at the Department's head office.

(b) The Director-General shall secure that the seconded members referred to section 47(1)(b) of the Act
- (i) are seconded as set out in the Act, and
- (ii) are complemented by an equal number of members employed by the Department
- (iii) receive support from the Department.

(11) Subject to section 46(1) of the Act, anyone seeking to interact with the Department in the name or on behalf of another person in respect of a matter flowing from the Act shall produce a power of attorney as set out in Annexure 56.

(12) A foreigner who is the child or spouse of a resident or citizen may be issued with an identification certificate substantially in the form and with the contents set out in Annexure 59 in order to carry his or her temporary residence permit in the case in which such foreigner does not have a passport.

Regulation 51
Short Title and Commencement

(1) These Regulations shall be referred to as the Immigration Regulations.

(2) These Regulations shall come into force and effect thirty days from the date of their publication in the Government Gazette.[130]

(3) The commencement dates referred to in Schedule 3 of the Act for the coming into force and effect of the provisions of that Schedule shall be March 12, 2003 except in respect of items 1(b) where reference is made to the Appeal Refugee Board, 2(2) and (3) of the amendments to the Refugees Act, 1998, which items 1(b) where reference is made to the Appeal Refugee Board, 2(2) and (3)[131] shall, subject to item 3, come into force and effect at a time to be determined by the Minister by public notice in the Government Gazette.

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SCHEDULE A - APPLICATIONS

Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7
Item No.	**Application type and relevant section of the Act or regulation**	**Form's Annexure No.**	**Documents and other information required in respect of application**	**Annexure No. of permit or other document to be issued**	**Conditions that may be imposed on a permit or endorsed on other document**	**Place of application**
1	Visa - 1(xlii)	2	(a) Passport valid for no less than 30 days after the expiry of intended visit (b) Payment of the prescribed fee in terms of Schedule D. (c) A vaccination certificate, as per Schedule I (d) Proof of financial means, to the satisfaction of the Department, in the form of - • bank statements, • salary advices, • undertaking(s) by the host(s) in the Republic, • bursaries, • medical cover, or • cash available, including credit cards or travellers' cheques to cover envisaged living expenses during the sojourn in the Republic (e) Applicants travelling by air must be in possession of a return or onward ticket or proof of sufficient funds, or lodge a cash deposit of equivalent value to such a ticket, or has satisfied the Department of his or her means of departure (f) Statement and/or documentation confirming purpose and duration of visit, to the satisfaction of the Department.[132]	3	(a) For good cause, limits on the type of activities which may be undertaken (b) Submission of additional relevant documents within a specified period (c) Submission of financial guarantees prescribed in these Regulations or the Act (d) Submission of proof of means of the non-transferable onward or return travel referred in column 4, or (e) Limits on the period of the visit or permit or validity of other document, provided that, in the absence of a determination of period, the period shall be 90 days	Mission
2	Certificate in lieu of a passport on departure– section 9(3)(a)	10	(a) Proof of identity (b) Reasons for the application (c) Country of destination's guarantee of admission without a passport, unless utilised for a deportation (d) Citation of bilateral or multilateral agreements provide for such readmission without a	11	The same as for Item 1	Regional Office

			passport or with such a document			
3	To enter or leave the Republic at a place other than a port of entry – section 9(3)(c)(i) and the written permission or passport endorsement referred to in section 31(2)(c)	8	(a) Passport valid for duration of intended period of stay (b) Payment of any prescribed processing fee (c) Must be in possession of proof of status or be a citizen	12	The same as for Item 1	Port of entry, Regional Office
4	Visitor's permit – 11(1) in respect of a bona fide visit which exclude work or activities in respect of which a permit in terms of any other section of the Act is required	14 OR 16	(a) All the requirements under Item 1 (b) Valid visa, if required, in the case of port of entry (c) Valid permit, in the case of an application submitted to a Regional Office, subject to regulation 18(6) (d) Where a visa is not required, documentation detailing the purpose of the visit and institutions or persons in the Republic involved, if any (e) Where a visa is not required, proof of fixed employment or other commitments abroad[133] (f) Compliance with regulation 19(3), if required	18	The same as for Item 1, with the addition of an endorsement indicating that the permit was issued in terms of regulation 18(6), if applicable\.	Port of entry in respect of 11(1)(a) & (b), and 11(1)(ii); or Regional Office in respect of change of status or conditions
5	Renewal of a visitor's permit – section 11(1)(b)(i)	15	(a) All the requirements under Item 1 (b) Valid permit (c) A letter motivating the reasons for the request	17	The same as for Item 1	Regional Office

6	Visitor's permit 3 months to 3 years– section 11(1)(b)(ii)(aa) In respect of sabbatical	14 OR 16	(a) All the requirements under Item 1 (b) Valid visa, if required in the case of port of entry (c) Valid permit, in the case of Regional Office, subject to regulation 18(6) (d) Additional for sabbatical:- • A letter from the foreign academic institution, confirming enrolment abroad • A letter from the host organisation or institution in the Republic	18	The same as for Item 1 with the addition of an endorsement indicating that the permit was issued in terms of regulation 18(6), if applicable.	Mission, or Regional Office in the case of change of status or conditions
7	Visitor's permit 3 months to 3 years–section 11(1)(b)(ii)(bb) in respect of voluntary or charitable activities, including *inter alia* unpaid internships and unpaid religious work	14 OR 16	(a) All the requirements under Item 9(1) (b) A letter from the organisation where the services will be rendered, confirming the nature and period of the services (c) A letter of confirmation that it is not a paid post.	18	The same as for Item 1 with the addition of an endorsement indicating that the permit was issued in terms of regulation 18(6), if applicable.	Mission, or Regional Office in respect of change of status or conditions
8	Visitor's permit 3 months to 3 years– section 11(1)(b)(ii)(cc) in respect of research	14 OR 16	(a) All the requirements under Item 9(1) (b) A letter from the educational institution concerned, confirming the nature and period of the research (c) Confirmation of available funds to cover accommodation, living and medical expenses for the duration of the research	18	As for Item 1 with the addition of an endorsement indicating that the permit was issued in terms of regulation 18(6), if applicable.	Mission, or Regional Office in respect of change of status or conditions

9 (1)	Extended Visitor's permit for other activities and cases– section 11(1)(ii)(dd) - In respect of the spouse or dependent child under the age of 25 - (a) of a holder of a valid permit issued in terms of sections 13 to 15, 17, 19, 21 and 22, (b) pending the outcome of a permanent residence application or on the basis of such spouse's application, or (c) in terms of regulation 18(10) .	14 OR 16	(a) All the applicable requirements under Item 1[134] (b) Valid visa, if required in the case of port of entry (c) Valid permit, in the case of Regional Office, subject to regulation 18(6) (d) Medical certificate in terms of regulation 50(8) in respect of the applicant and all members accompanying the applicant, to be no older than 6 months[135] (e) Birth certificate, to be unabridged where relevant to prove parenthood (f) Marriage certificate where applicable (g) Proof of a spousal relationship in terms of the Act and these Regulations (h) Divorce decree, where applicable (i) Proof of custody, where applicable (j) Death certificate, in respect of late spouse, where applicable (k) Consent from parent(s), where applicable (l) Proof of adoption, where applicable (m) Proof of legal separation, where applicable (n) Police clearance certificates in respect of all applicants, except for diplomatic permits, who are 23 years or older, in respect of all countries where person(s) resided one year or longer, to be submitted within twelve months of the application if not immediately available (o) Additional information which the Department may request to satisfy itself of the existence of a good faith spousal relationship as set out in regulation 33(5), where applicable (p) In respect of diplomatic permits only, certificate from the applicant's foreign affairs department certifying clean record[136]	18	(a) The same as for Item 1 with the addition of an endorsement indicating that the permit was issued in terms of regulation 18(6), if applicable (b) To report to the Department as and when required	Mission, or Regional Office in respect of change of status or conditions
(2)	In respect of bona fide activities excluding work or activities in respect of which		(a) All the applicable requirements under Item 9(1) (b) Documentation detailing the activity to be conducted and institutions or persons in the Republic involved, if any (c) Proof of sufficient financial available means within the Republic to conduct the intended activity and		(a) The same as for Item 1 with the addition of an endorsement indicating that the permit was issued in terms of regulation 18(6), if applicable	Mission, or Regional Office in respect of change of status or

	a permit in terms of any other section of the Act is required		meet living expenses calculated at R15 000.00 a month per person, to be provided in the form of a certification of a chartered accountant, which, *inter alia*, may take into account up to R10 000 of the value of available housing, provided that such same proof may be utilised by a child younger than 25 years of age or a spouse[137].		(b) To report to the Department as and when required	conditions
(3)	In respect of a foreigner waiting for the outcome of (a) a good faith application for a change of status or (b) a good faith appeal contemplated in Section 8		(a) All the applicable requirements under Item 1 (b) Valid permit, in the case of Regional Office, subject to regulation 18(6) (c) Letter stating the reasons for remaining in (d) the Republic and any hardship in departing, if any (e) Proof of sufficient financial available means within the Republic to meet living expenses calculated at R10 000.00 a month per person, to be provided in the form of a certification of a chartered accountant which, *inter alia*, may take into account up to R5 000 of the value of available housing		(a) The same as for Item 1 (b) To report to the department as and when required	Mission or Regional Office in respect of change of status or conditions
10	Diplomatic permit – 12(1)	19A	(a) Valid passport (b) Accreditation or proof of diplomatic status from the relevant foreign state (c) Certification of diplomatic status, or relevant qualification or position, and reciprocity from the embassy of the relevant foreign state in the Republic in respect of the foreigners mentioned in section 12(1)(b) to (e) of the Act.	19B	As determined by Foreign Affairs	Mission, Regional Office, or Dept. of Foreign Affairs within the Republic. Ports of entry as set out in Schedule C1
11 (1)	Study permit – 13(1)(a)	14 OR 16	(a) All the requirements under Item 1 (b) An official letter of provisional enrolment from the institution of learning concerned (c) Details regarding arranged accommodation, if any (d) Proof of sufficient funds to cover tuition fees, maintenance and incidental costs (e) In the case of a minor, the particulars of the person in the Republic who will act as the learner's guardian and confirmatory letter from such person,	13	(a) As for Item 1 (b) The applicant must provide periodic reports of satisfactory performance in his or her studies by means of his or her letter, which reports, unless otherwise determined by the Department under the circumstances, shall be due	Mission, or Regional Office

			and proof of consent for the intended stay from both parents, or from the sole custody parent along with proof of sole custody. (f) An outline of the course or academic programme for which the applicant has been accepted and proof of the required qualifications to attend it, if any (g) A police clearance certificate if required in respect of all applicants of 23 years of age or older, in respect of all previous countries of residence for periods exceeding one year, to be submitted within twelve months of the application if not immediately available (h) Copy of a return ticket or a repatriation guarantee in a form of a deposit equivalent to the cost of an air ticket to the country of origin or residence, if required		every six months for the first year and at the end of each academic year or semester thereafter.	

-2	Study permit – 13(1)(b)	14 OR 16	(a) All the requirements under Item 1 (b) An official letter of provisional enrolment from the educational institution concerned stating: (i) details regarding arranged accommodation, if any (ii) that the applicant has sufficient funds to cover tuition fees, maintenance and incidental costs (iii) In the case of a minor, the particulars of the person in the Republic who will act as the learner's guardian and proof of consent for the intended stay from both parents, or from the sole custody parent along with proof of sole custody. (iv) the course or academic programme for which the applicant has been accepted and that the applicant has the required qualifications to attend it, including any applicable language proficiency requirement (v) the undertaking to notify the Department when the learner has completed his/her studies or is no longer performing satisfactorily and to comply with the other applicable provisions of the Act (vi) the undertaking to notify the Department at least every six months that the learner is no longer performing satisfactorily. (c) A police clearance certificate if required in respect of all applicants of 23 years of age or older, in respect of all previous countries of residence for periods exceeding one year, to be submitted within twelve months of the application if not immediately available. (d) Copy of a return ticket or a repatriation guarantee in a form of a deposit equivalent to the cost of an air ticket to the country of origin or residence, if required.	13	As for Item 1	Mission, or Regional Office
12	Treaty permit – 14(1)	14 OR 16	(a) Letter from the relevant organ of State attesting to • the fact that the relevant foreigner participates in such programme • the nature of the programme and the treaty under	13	(a) As for Item 1, where applicable (b) Reflecting the nature and purpose of the programme, as	Mission, Dept. of Foreign Affairs, or

			which it is conducted • the type of activities which the foreigner is expected to perform under such programme and the duration thereof and whether he or she is expected to conduct work (b) As for Items 1 and 9, where applicable		determined by Foreign Affairs or other organ of State	other organ of State within the Republic
13	Business permit – 15(1)	14 OR 16	(a) All the requirements under Items 1 and 9(1), as applicable (b) Proof of availability of funds for transfer from abroad (c) Undertaking to register with the appropriate statutory body, if required by the nature of the business (d) Chartered accountant certification complying with regulation 24	13	The same as for Item 1 contingent on the investment being made	Mission, or Regional Office
14	Business permit – 15(1) In respect of an investment in an existing business	14 OR 16	(a) All the requirements under Item 13 (b) Documentation proving the investment, such as shareholders' or partnership agreements (c) Details of the partners/directors (d) Proof of compliance with regulation 24	13	As for Item 1	Mission, or Regional Office
15	Crew permit - Crew of a public ship of a foreign state transiting the Republic en route to or from such ship		(a) Valid passport or Seaman's Identification Certificate (b) Letter of request from the owner, including an undertaking of responsibility for such person's compliance with the Act			
16	Crew permit - 16(1) crew of a foreign private or chartered ship while such ship is temporarily in a South African port of entry		(a) Valid passport (b) Proof of financial means of the owner, *inter alia,* in the form of – • bank statements, • salary advices, • cash available, and/or • travellers' cheques to cover day to day needs and medical cover (c) Cash deposit, should the immigration officer	18	(a) The same as for Item 1 (b) As per section 16(2) of the Act read with regulation 25(4)	Port of entry

			deem it necessary.			
17 (1)	Medical permit - 17(1)(b)	14 OR 16	(a) All the requirements under Item 1 (b) An official letter of provisional enrolment from the treating institution concerned stating: (i) details regarding arranged accommodation (ii) that the applicant has sufficient funds to cover his or her medical costs, maintenance and incidental costs (iii) in the case of a minor, the particulars of the person in the Republic who will act as the patient's guardian, and proof of consent for the intended stay from both parents, or from the sole custody parent along with proof of sole custody. (iv) the medical treatment for which the applicant has been accepted and the duration thereof (v) the undertaking to notify the Department when the applicant has completed his/her treatment and to comply with the other applicable provisions of the Act (vi) the undertaking to notify the Department at least every eight months that the applicant is still under treatment. (c) Copy of a return ticket or a repatriation guarantee in a form of a deposit equivalent to the cost of an air ticket to the country of origin or residence, if required	13	(a) The same as for Item 1 as well as :- (b) For the period as indicated by the medical practitioner / medical institution (c) For the type of institution - publicly funded, subsidised or private	Mission, or Regional Office
18	Relatives permit - 18(1)	14 OR 16	(a) All the applicable requirements under Item 9(1) (b) Compliance with regulation 27(2)	13	(a) The same as for Item 1 (b) To report to the Department as and when required	Mission, or Regional Office
19(1)	Work permit – (General Quota) 19(1)	14 OR 16	(a) All the applicable requirements under Item 9(1) (b) An offer of employment (c) Certification by a chartered accountant regarding terms & conditions of employment as set out in Regulation 28(4)(a)(i) (d) Commitment by employer to comply with	13	The same as for Item 1	Mission, or Regional Office

(2)	Work permit – (Extraordinary Quota) regulation 28(4)(e)		Regulation 28(3) (e) Certification by a chartered accountant containing job details as set out in regulation 28(4)(a)(ii) (a) All the applicable requirements under Item 9(1) (b) Proof of the relevant skills and/or qualifications			

20	Work permit (General) – 19(2)	14 OR 16	(a) All the applicable requirements under Item 9(1) (b) Submission of the original advertisement in the national printed media, which must comply with regulations 28(5) and (6)(b), except for the categories listed in Schedule E (c) An employment contract containing the information set out in regulation 28(6)(d) (d) Proof that all short-listed candidates have been interviewed (e) A letter of motivation from the employer as required in regulation 28(5) (f) Certifications by a chartered accountant in terms of sections 19(2)(b) and (d) (g) In the case of senior positions, reasons for not filling the position by the promotion of existing personnel (h) Undertaking to register with the professional body, board or council in the Republic, where applicable (i) The documentation and statement contemplated in regulation 28 (6)(f) (j) Letter of approval, where required by a law from - (i) the relevant professional body/board/council; (ii) the Department of Labour; and/or (iii) the relevant organ of State	13	(a) The same as for Item 1 (b) The period for which a work permit is granted, not exceeding three (3) years (c) The position or capacity of the applicant (d) The name of the employer, and Province, where applicable (e) Any financial guarantees that have been posted, where applicable (f) Validity of permit subject to the submission of a certificate in terms of section 19(3) within 6 months from the date of issuance of this permit and within every year thereafter (g) That a chartered accountant certificate certifies periodically in terms of section 19(3)	Mission, or Regional Office
21	Work permit (Exceptional skills) – 19(4)	14 OR 16	(a) All the requirements under Item 9(1), where applicable (b) A letter from a foreign or South African organ of State, or from an established South African academic, cultural or business body, confirming the applicant's exceptional skills or qualifications (c) Testimonials from previous employers, if applicable, and a comprehensive curriculum vitae (d) Other proof to substantiate exceptional skills or qualifications, such as publications, and testimonials	13	The same as for Item 1	Mission, or Regional Office

22	Work permit (Intra-company transfer) – section 19(5)	14 OR 16	(a) All the requirements under Item 9(1), where applicable (b) A letter from the international concern confirming that the foreigner will be transferred to a branch/affiliated South African company (c) A letter from the South African company confirming the transfer of such foreigner from the parent/affiliated company abroad, as well as specifying the occupation and capacity in which the foreigner will be employed, and that the maximum duration will not exceed two years (d) A certification by a chartered accountant acting on behalf of the employer that the employer needs to employ such foreigner within the Republic and outlining the foreigner's job description (e) An undertaking from the employer as required in section 19(5)(b) (f) The financial guarantees required under section 19(5)(c) and regulation 28(10).	13	The same as for Item 1	Mission, or Regional Office
23	Work permit (Corporate worker) – section 21(1)	14 OR 16	(a) All the applicable requirements under Item 9(1)[138] (b) Corporate permit holder's letter specifying the reference number of the corporate permit, the fact that the person is employed under a corporate permit, the occupation and capacity in which the applicant will be employed, and his or her remuneration[139] (c) Corporate permit holder's certification contemplated in regulation 30(14).	13	The same as for Item 1	Mission, or Regional Office
24	Work permit (Corporate worker) – section 21(4)(b)- In respect of an agreement with a foreign state	14	(a) A passport valid for no less than 30 days after the expiry date of the intended stay (b) A full set of fingerprints (c) A valid employment contract entered into and attested in the worker's country of origin, for a maximum period of 18 months (d) An undertaking by the proposed employer, that he/she will relocate the worker to his/her country of residence on completion or expiry of the contract (e) Corporate permit holder's certification contemplated in regulation 30(14)	18	The same as for Item 1	Port of entry

25	Work permit (Corporate worker) – section 21(4)(c)- In respect of seasonal labour	14 OR 16	(a) A passport valid for not less than 30 days after the expiry date of the intended stay (b) A full set of fingerprints (c) A valid employment contract, which has been entered into and attested in the worker's country of origin, for a maximum period of 6 months (d) An undertaking by the proposed employer, that he/she will remove that worker to his/her country of residence on completion or expiry of the contract (e) Corporate permit holder's certification contemplated in regulation 30(14)	18	The same as for Item 1	Port of entry
26	Retired person permit – section 20(1) Non -worker	14 OR 16	(a) All the applicable requirements under Item 9(1) (b) Chartered accountant's certification of the financial requirements envisaged in sections 20(1)(a) and 20(1)(b), and regulation 29	13	The same as for Item 1	Mission, or Regional Office

27	Retired person permit – section 20(1) : Worker	14 OR 16	(a) All the requirements under Item 26 (b) Proof that a citizen or resident is not ready, willing and able to take up the relevant employment	13	The same as for Item 1	Mission, or Regional Office
28	Corporate permit (Corporate applicant)– section 21(1)	21	(a) The certification of a chartered accountant as contemplated in section 21(2)(a), containing an organisational diagram of the relevant productive unit, including the staff's residential status and job's descriptions (b) The undertaking by the corporate applicant described in section 21(2)(b) and regulation 28(11) (c) Training fee and/or an undertaking to implement the training programme contemplated in regulation 30(8)(a) and (b), (d) An undertaking by the corporate applicant, that he/she will be responsible for the removal of foreigners employed in terms of this permit to their respective countries of residence on expiry of the contract, (e) The representations required under section 21(2)(d), and (f) An undertaking to comply with the provisions of Regulation 30(8).	22	(a) The number of foreigners that may be employed (b) The positions they may occupy or (c) The centres where they may be employed	Mission, or Regional Office
29	Exchange permit – section 22(a) Higher educational institutions	14 OR 16	(a) All the applicable requirements under Item 9(1) (b) A letter from the Department of Education or a public higher educational institution in the Republic, confirming that it is responsible for organising or administering the programme, outlining the activities and duration thereof, as well as confirming that it will take full responsibility for the student whilst he or she is in the Republic (c) A letter from an organ of the foreign State, confirming the particulars of the student, including confirmation of the student's registration with a tertiary educational institution abroad, as well as the date on	13	The same as for Item 1	Mission, or Regional Office

			which study will commence			

30	Exchange programme permit – section 22(a) –cultural, economic / social exchange	14 OR 16	(a) All the applicable requirements under Item 1 (b) A letter from the organ of the State confirming the status/existence of the exchange programme (c) A letter from the educational institution in the Republic confirming that the permit holder, if a student, has been accepted to register, if applicable, or a letter from the entity, organisation or family where the foreigner intends to conduct his or her programme. (d) A letter from an organ of the foreign State confirming awareness of the exchange programme (e) A letter from the sponsoring body responsible for the organising or administering of the programme, confirming that it will take responsibility for the permit holder whilst he or she is in the Republic (f) Annual reports from the sponsoring body, outlining progress of the programme. In the absence of a sponsoring body, the educational institution or organ of State must submit the reports, as well as the confirmation mentioned in (e)	13	The same as for Item 1	Mission, or Regional Office
31	Exchange permit – section 22(b) – Exchange work programmes	14 OR 16	(a) All the applicable requirements under Item 1 (b) A letter from a prospective employer certifying compliance with, and providing the undertaking contemplated in section 22(b), including the provision of housing, medical care and other aspects relating to the welfare and needs of such foreigner, and regulation 31(4). (c) Copy of the job offer detailing the terms, conditions and duration of the intended employment.	13	The same as for Item 1	Mission, or Regional Office

32	Asylum permit –section 23 asylum seeker	52		23	(a) The permit is only valid for travel between the port of entry and the Refugee Reception Office (b) The permit is only valid for fourteen (14) days (c) Any other condition that may be necessary for the better execution of the Act and these Regulations and which is relevant to the circumstances of the asylum seeker.	Port of Entry
33	Transit visa – section 24	2	(a) As in Item 1, except (d) to (f) (b) Where applicable onward air or sea transport ticket (c) Proof of admissibility in the foreign country of onward travel	3	(a) As in Item 1, where applicable (b) To restrict the holder to remain in the transit area of the port of entry concerned	Mission
34	Permanent residence permit – sections 26 & 27	24	(a) Requirements set out in Attachment 24 (b) Medical report in terms of regulation 50(8) not older than six months [140] (c) All the applicable requirements under Item 9(1)	25		Mission, or Regional Office
35	Permanent residence permit - section 26(a) – in respect of a worker who held a work permit for 5 years	24	(a) All the applicable requirements under Items 34 and 20(h) (b) Proof of five years continuous work permit status (c) Offer of permanent employment (d) Certification by the employer's chartered accountant contemplated in section 26(a)(i) (e) Certification by the Department of Labour contemplated in section 26(a)(ii)	25		Mission, or Regional Office closest to relevant employer or business
36	Permanent	24	(a) All the applicable requirements under Item 34	25		Mission, or

	residence permit - section 26(b) – in respect of a spouse of a citizen/resident		(b) Identity document or permanent residence permit of spouse (c) Declaration of support for the application by the spouse who is the citizen or resident			Regional Office
37	Permanent residence permit section 26(c)) in respect of a child under the age of 21 of a citizen or resident	24	(a) All the applicable requirements under Item 34 (b) Undertaking by parents with regard to financial support	25		Mission, or Regional Office
38	Application for confirmation of residence in respect of a child of a citizen/resident under the age of 21 – section 26(c)		(a) Permanent residence permit (b) Application in the form of a written request signed by the applicant.			Mission, or Regional Office
39	Permanent residence permit -section 26(d) - in respect of a child over the age of 21 of a citizen	24	(a) All the applicable requirements under Item 34 (b) Undertaking by parents with regard to financial support may be required	25		Mission, or Regional Office
40	Permanent residence permit– section 27(a) on the ground	24	(a) All the applicable requirements under Item 34 (b) Offer for permanent employment (c) Certification by the (prospective) employer's chartered accountant as required by section 27(a)(i)	25	To remain employed in the field in respect of which the employment offer was made for two years	Regional Office closest to relevant employer

	of permanent employment offer		(d) Certification by the Department of Labour as required in section 27(a)(ii)			or business
41	Permanent residence permit – section 27(b) on the grounds of extraordinary skills or qualifications	24	(a) All the applicable requirements under Item 34 (b) All the requirements under Item 21	25		Mission or Regional Office
42	Permanent residence permit – section 27(c) on the ground of establishing a business	24	(a) All the applicable requirements under Item 34 (b) All the applicable requirements listed under Item 13(b)(c) and (d)	25		Mission, or Regional Office
43	Permanent residence permit – section 27(c) for person holding a business permit	24	(a) All the applicable requirements under Item 34 (b) Proof of status in terms of section 15 (c) Certification by a chartered accountant as prescribed in regulation 33(13) reflecting the book value of the investment	25		Regional Office
44	Permanent residence permit– section 27(c) on the ground of investing in a business	24	(a) All the applicable requirements under Item 34 (b) All the applicable requirements listed under Item 14(b)(c) and (d)	25		Mission, or Regional Office

41	Permanent residence permit – section 27(b) on the grounds of extraordinary skills or qualifications	24	(a) All the applicable requirements under Item 34 (b) All the requirements under Item 21	25		Mission or Regional Office
45	Permanent residence permit – section 27(d) in respect of a refugee	24	(a) All the requirements under Item 34 (b) All the requirements under Item 9(1), as applicable, provided that, if the original is not available, a sworn affidavit will be acceptable in respect of (g), in the case of a foreign marriage, (h) to (m), and (n) in respect of the country fled from only (c) Proof of compliance with section 27(c) of the Refugees Act, 1998 (Act 130 of 1998) (d) Affidavit with regard to aliases used by the applicant and/or family members, if applicable	25		Regional Office
46	Permanent residence permit – section 27(e) on ground of retiring in the Republic	24	(1) All the applicable requirements under Item 34 (2) Certification by a chartered accountant as required in section 27(e) and regulation 33(16)	25		Mission, or Regional Office
47	Permanent residence permit – section 27(f) on the ground of a minimum net worth	24	(a) All the applicable requirements under Item 34 (b) Certification by a chartered accountant as required in section 27(f), reflecting proof of a minimum net worth of R10 million and having tendered R75 000 to the Department as the fee referred to section 27(f) in the Act	25		Mission, or Regional Office
48	Permanent residence permit – section 27(g)- in respect of relatives of a citizen / resident within the first step of kinship	24	(a) All applicable requirements under Item 34 (b) Proof of citizen / resident's annual income except where the relative is the parent of a minor child (c) Undertaking by the resident / citizen with regard to financial, medical and physical responsibility for the applicant, except where the relative is the parent of a minor child	25	The permit shall lapse upon the child becoming 21	Mission, or Regional Office

41	Permanent residence permit – section 27(b) on the grounds of extraordinary skills or qualifications	24	(a) All the applicable requirements under Item 34 (b) All the requirements under Item 21	25		Mission or Regional Office
49	Lawful Authority to previously deported person section 34(5)(a)	2	(a) Proof of compliance with regulation 34(2) (b) Deposit may be required (c) All the requirements under Item 1	3	As per Item 1	
50	Exemption - regulations 17(2)(a),		(a) Valid passport (b) Valid visa, if required (c) Valid temporary or permanent residence permit, in the case of a foreigner (d) Proof of right to return to country of nationality and/or residence may be required in the case of a foreigner	9	As in Item 1, except (c) and (d)	Port of entry, or Regional Office

SCHEDULE B
PORTS OF ENTRY

(a) Airports:
Bloemfontein International Airport
Cape Town International Airport
Durban International Airport
Johannesburg International Airport
Kruger Mpumalanga International Airport
Lanseria International Airport
Mafikeng Airport[1]
Pilanesberg International Airport
Polokwane International Airport (Gateway)
Port Elizabeth International Airport
Richards Bay Airport[2141]
Upington International Airport
Waterkloof Airforce Base Airport[3]

(b) Sea ports:
Cape Town Harbour
Durban Harbour
East London Harbour
Mossel Bay (crew only)
Port Elizabeth Harbour
Richards Bay Harbour
Saldanha Harbour (crew only)

(c) Land border posts:
Alexander Bay
Beit Bridge
Boshoek
Bothashoop
Bray
Bushmansneck
Caledonspoort
Derdepoort
Emahlatini
Ficksburg Bridge
Gemsbok
Giriyondo
Golela
Groblersbrug
Jeppes Reef
Josefsdal
Kopfontein
Kosi Bay

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[1] Effective only from a date to be determined by the Minister in consultation with the Minister of Transport and the Minister of Safety and Security by public notice in the Government Gazette.

[2] Effective only from a date to be determined by the Minister in consultation with the Minister of Transport and the Minister of Safety and Security by public notice in the Government Gazette.

[3] For use by official ships of, or ships used for official use by, the Republic or a foreign State.

Lebombo
Mahamba
Makgobistad
Makhaleens Bridge
Makopong
Mananga
Maseru Bridge
McCarthy's Rest
Middelputs
Monantsa Pass
Nakop
Nerston
Noenieput
Ongeluksnek
Onseepkans
Onverwacht
Oshoek
Pafuri
Peka Bridge
Platjan
Pontdrift
Ramatlabama
Ramatseliso
Rietfontein
Sani Pass
Sendelingsdrift
Sepapus Gate
Skilpadshek
Stockpoort
Swartkopfontein
Telle Bridge
Twee Rivieren
Van Rooyens Gate
Vioolsdrift
Waverly
Quacha's Neck
Zanzibar

(d) Other locations designated from time to time by the Director-General as a port of entry for a special purpose and for a given time only, provided that the Director- General shall require those who benefit from such an arrangement to pay a fee of R1 000-00 each to defray the cost of specially manning such ports of entry.

SCHEDULE C
COUNTRIES WHOSE CITIZENS ARE EXEMPT FROM VISAS

1. The citizens of the foreign countries listed in the relevant items of this Schedule are not required to hold a visa in order to report for an examination to a port of entry, subject to the terms and conditions set out in this Schedule, including *inter alia* the intended period of stay in the Republic.

2. The holder of a South African passport, travel document and document for travel purposes are not required to hold a visa to enter the Republic.

3. (a) The holder of passports[142] of
   (i) Australia
   (ii) the United Kingdom of Great Britain and Northern Ireland,
   (iii) the British Islands of Guernsey and Jersey, Isle of Man and Virgin Islands,
   (iv) the Republic of Ireland, and
   (v) British Overseas Territories
   does not require a visa.

   (b) A national of the British Dependent Territories, including Anguilla, Bermuda, British Antarctic Territory, British Indian Ocean Territory, Cayman Islands, Falkland Islands, Gibraltar, Montserrat, Pitcairn, Henderson, Ducie and Oeno Islands, South Georgia and South Sandwich Island the Sovereign Base Area of Akrotiri and Dhekelia in Cyprus and the Turks and Caicos Islands is required to hold a visa

4. The holder of a passport of the following countries is not required to hold a visa in respect of purposes for which a visitor's permit may be issued for an intended stay of 90 days or less and when in transit
   Andorra
   Argentina
   Austria
   Belgium
   Botswana
   Brazil
   Bulgaria
   Canada
   Chile
   Czech Republic
   Denmark
   Ecuador
   Finland
   France
   Germany
   Greece
   Iceland
   Ireland
   Israel
   Italy
   Jamaica
   Japan
   Liechtenstein
   Luxemburg
   Malta
   Mexico
   Monaco
   Namibia
   Netherlands
   New Zealand

Norway
Paraguay
Portugal
San Marino
Singapore
Spain
St Helena
St Vincent & the Grenadines
Swaziland
Sweden
Switzerland
Uruguay
Venezuela
United States of America

5. The holder of a passport of the following countries is not required to hold a visa in respect of purposes for which a visitor's permit may be issued for an intended stay of 30 days or less and when in transit.
Antigua and Barbuda
Barbados
Belize
Benin
Bolivia
Cape Verde
Costa Rica
Cyprus
Gabon
Guyana
Hong Kong: only with regard to holders of Hong Kong British National-Overseas passports and Hong Kong Special Administrative Region passports
Hungary:
Jordan
Lesotho
Macau: only with regard to holders of Macau Special Administrative Region passports (MSAR)
Malaysia
Malawi
Maldives
Mauritius
Namibia
Poland
Peru
Seychelles
Slovak Republic
South Korea
Thailand
Zambia
Zimbabwe: only in respect of government officials, including police on cross border investigation

6. Holders of diplomatic and official passports of the following countries do not require visas in respect of purposes for which a visitor's permit may be issued for an intended stay of 90 days or less, unless otherwise indicated, or transit
Albania 120 days
Angola
Croatia 120 days
Cyprus

Hungary	120 days
Egypt	
Malta	
Morocco	
Mozambique	
Paraguay	
Poland	
Romania	
Slovak Republic	
Slovenia	
Thailand	
Tunisia	

7. Notwithstanding this Schedule, a foreigner whose visa exemptions have been withdrawn shall comply with visa requirement until notified by the Department that his or her visa exemption has been re-instituted by the Department on petition or of its own accord.

8. Visas are not required by passport holders of Lesotho, Swaziland, Botswana, Namibia, Zambia and Malawi who are entering the Republic as commercial heavy-duty vehicle drivers provided their visits do not exceed 15 days and on condition that they can produce a letter confirming their employment with a transport company on entry.

9. Staff members of the Southern African Development Community (SADC) who travel on SADC laissez-passers are exempt from visa requirements for bona fide official business visits of up to 90 days and transit.

10. (a) Holders of United Nations [UN] laissez-passer are exempt from visa requirements when visiting the Republic for periods not exceeding 90 days for purposes for which a visitor's permit may be issued, and for official business purposes and transits and when accredited for placement at a UN mission in the Republic for the duration of their accreditation.

    (b) (i) Volunteers attached to UN agencies and travelling on ordinary passports and

    (ii) persons travelling on their national passport and employed by the UN or are performing services on behalf of the UN or its agencies, including their

    (aa) spouses,

    (bb) dependent relatives of 25 years of age or younger, and

    (cc) member of their household

    are exempt from visa requirements, provided that they are in possession of the relevant letters or identification documents to identify themselves at ports of entry as personnel of the UN or one of its agencies.

SCHEDULE C1
CATEGORIES OF PERSONS TO WHOM A DIPLOMATIC PERMIT MAY BE ISSUED AT A PORT OF ENTRY[143]

1. Heads of State and Heads of Government

2. Diplomatic and official passport holders of the following countries, on official visits or for accreditation:

Albania :	120 days
Angola:	90 days
Austria:	90 days
Belize	30 days
Bulgaria:	90 days
Croatia:	120 days
Czech Republic	90 days
Cyprus	90 days
Egypt	30 days
France	90 days
Greece:	90 days
Hungary:	120 days
Israel:	90 days
Jamaica	90 days
Malaysia	30 days
Malta:	90 days
Morocco	30 days
Mozambique	30 days
New Zealand	90 days
Norway:	90 days
Paraguay:	120 days
Poland:	90 days
Portugal:	90 days
Romania	90 days
San Marino	90 days
Slovenia:	120 days
South Korea	30 days
Slovak Republic	90 days
St Vincent & the Grenadines	90 days
Turkey	30 days
Uruguay:	90 days
Zambia	30 days

3. Diplomatic and official passport holders of the following countries when on official visits not exceeding 30 days:

Algeria
Australia
Botswana
Brazil
Canada
Chile
Comoros
Costa Rica
Denmark
Ecuador
Finland

Germany
Hong Kong
Iceland
Ireland (Rep. of)
Ivory Coast
Kenya
Lesotho
Liechtenstein
Luxemburg
Madagascar
Malawi
Mauritius
Namibia
Seychelles
Singapore
Spain
Swaziland
Sweden
Switzerland

SCHEDULE D
COUNTRIES WHOSE NATIONALS ARE SUBJECT TO VISA FEES

Fees for the issuance of a visa shall be collected in respect of passport holders of the following foreign countries when travelling on an ordinary passport:

Aden
Afghanistan
Albania
American Samoa
Andorra
Angola
Anguilla
Armenia
Aruba
Ascension
Azerbaijan
Australia
Austria
Bahamas
Bahrain
Belarus
Belau (Palau)
Belgium
Belize*
Byelorussia
Benin (Dahomey)*
Bhutan
Bosnia/Herzegovina
Bouvet Islands
Brunei
Bulgaria
Burkina Faso
Burma (Myanmar)
Burundi
Cambodia (Kampuchea)
Cameroon
Canada
Central African Republic
Chad
China (People's Republic)
Comoros
Cote D'Ivoire (Ivory Coast)
Croatia
Cuba
Denmark
Dahomey (Benin)
Democratic Republic of the Congo
Diego Garcia
Djibouti
Dominican Republic
Eastern Caribbean
El Salvador
Ellice Island (Tuvalu)
Equatorial Guinea*

Eritrea
Estonia
Ethiopia
Falkland Islands
Fiji
Finland
France
French Guiana
French Polynesia
Gabon*
Gambia
Georgia
Germany
Ghana
Gibraltar
Gilbert Island(Kiribati)
Greece
Greenland
Grenada
Guadeloupe
Guam
Guatemala
Guinea-Bissau
Haiti
Honduras
Hong Kong*
Iceland
Indonesia
Iran (Persia)
Iraq
Italy
Ivory Coast (Côte d'Ivoire)
Jamaica
Japan
Kampuchea (Cambodia)
Kazakhstan
Kenya*
Kirghizstan
Kiribati (Gilbert Island)
Korea (People's Republic/North)
Korea (Republic of/South)*
Laos
Latvia
Lebanon
Liberia
Libya
Lithuania
Luxemburg
Macedonia
Madagascar
Malaysia*
Mali
Martinique
Marshall Island

Mauritania
Mexico
Micronesia
Moldavia
Monaco
Mongolia
Morocco
Mozambique
Myanmar (Burma)
Nauru
Nepal
Netherlands (Kingdom of)
Netherlands Antilles
New Guinea
New Zealand
Nicaragua
Niger
Nigeria
Northern Marianas
Norway
Oman
Pakistan
Palaci
Palau (Belau)
Panama
Papua New Guinea
Persia (Iran)
Philippines*
Pitcairn Islands
Poland
Portugal
Puerto Rico
Reunion
Romania
Russian Federation (except private guests of Embassy or Consular staff)
Rwanda
San Marino
Sao Tome & Principe
Saudi Arabia
Sierra Leone
Singapore
Slovenia
Somalia
Spain
Sri Lanka
St Kitts-Nevis-Anguilla
St Lucia
Sudan
Suriname
Syria
Tajikistan
Tanzania
Thailand*
Togo

Trinidad and Tobago
Tristan da Cunha
Tunisia
Turkey*
Turkmenistan
Turks & Caicos Islands
Tuvalu (Ellice Islands)
Uganda
Ukraine
United Arab Emirates
United States of America
Uzbekistan
Vanuatu
Vatican City
Venezuela
Vietnam
Western Sahara
Yemen (Arab Republic of)
Yemen (People's Republic of)
Yugoslavia (Federal Republic of)

*** In respect of visits intended to exceed thirty days.**

SCHEDULE E
OCCUPATIONS IN RESPECT OF WHICH ADVERTISEMENT IS NOT REQUIRED

The following categories of employment do not require advertisements

Religious workers
Key personnel at management level
Teachers at international schools
Aerospace Satellite Industry professionals
Chefs qualified by a specialized institute or with at least 4 years experience in preparation of traditional food
Models
Maritime industry professionals and qualified or skilled personnel
Sports professionals
Seasonal photographers and cameramen
Medical doctors and qualified practitioners
Seasonal hair stylists and make-up artists
Lighting or sound personnel in respect of special effects
Foreign spouses of citizens and residents, in respect of any category of employment

SCHEDULE F
REGULATIONS ON IMMIGRATION PRACTITIONERS

PART "A"

1. Definitions

As used in this Schedule

(1) "Association" means an Association of Immigration Practitioners, established in terms of item 2;

(2) "Code of Conduct" means the Code of Conduct set out in Part "B" of this Schedule; and

(3) "immigration practitioner" means a person, other than a practising advocate or attorney or a person referred to in regulation 46(2), who, for remuneration and by trade, represents or acts on behalf of other persons in respect of any of the Department's procedures, proceedings or activities flowing from the Act or these Regulations.[144]

2. Requirements and Conditions for Compliance by Immigration Practitioners

(1) An Association of Immigration Practitioners is hereby established and shall be presided over by three immigration practitioners, one member of the Regional Law Society[145] and one member from the Bar Council appointed by the Minister, and shall be chaired by a President elected by such persons, who are to be remunerated by such Association as determined by such Association. As soon as possible such Association shall constitute itself into a company established in terms of Chapter 21 of the Company Act.[146]

(2) Upon a petition of at least 50 persons[147] who are or would qualify to be immigration practitioners, the Minister shall establish another Association as set out in paragraph (1), in respect of which paragraph (1) shall apply *mutatis mutandis*, provided that for good cause and in consultation with the Board, the Minister may refuse to establish another Association when he or she deems that too many Associations already exist for the effective regulation of the profession.

(3) The Minister may disestablish an Association on account of its failure to perform its functions satisfactorily, provided that before doing so he or she shall give at least 60 days notice to its President and shall give the Association at least 30 days to remedy its shortcomings if they are of such a nature that they can be remedied.[148] Members of an Association which have been disestablished in terms of this provision shall remain immigration practitioners for purposes of these regulations for 90 days from the time of such disestablishment.

(4) All immigration practitioners shall belong to an Association. An Association shall not refuse membership to a qualifying applicant or a member of another Association unless there is good cause to do so. An Association shall determine Membership fees after consultation with the Director-General.

(5) An Association may advise the Department and the Board on matters relating to immigration practitioners and shall monitor the conduct of its members to ensure and promote their professionalism and integrity and to protect the interests of their clients.

(6) Without derogating from or limiting any other right available under any law, any aggrieved person may lodge a complaint against an immigration practitioner with the Association to which such practitioner belongs and such Association shall investigate all such complaints and, when warranted, shall adopt appropriate disciplinary action, in accordance with its rules, including expulsion. The Director-General may request copies of any documentation relating to any of such investigations or disciplinary proceedings. An Association must convey to the Director-General its disciplinary rules and any amendments thereof.

(7) An Association shall formulate proposals for the consideration of the Minister in respect of the test referred to in paragraph (10)(c), and shall administer to its members any test approved by the Minister, provided that any test approved by the Minister shall apply in respect of any and all Associations and there shall be only one test in force at any given time.[149]

(8) When making an application under the Act or these Regulations, or otherwise acting on behalf of another person, an immigration practitioner shall

(a) supply a written power of attorney containing substantially the information set out in Annexure 56;[150]

(b) lodge the application of a person who is outside the Republic at a mission;

(c) lodge the application of a person who is in the Republic at a Regional Office of the Department situated nearest to the home or business address of the applicant;[151]

(d) certify that the application has been signed by the applicant personally;
(e) sign personally; and
(f) provide his or her full address.

(9) Any immigration practitioner shall not continue or commence such business unless he or she is registered as an immigration practitioner in terms of these Regulations.

(10) No person shall be registered as an immigration practitioner unless he or she has reached the age of 21[152] years and-
(a) is a citizen or resident[153];
(b) has submitted an oath or solemn affirmation that he or she
(i) is not a member of the immediate family of an official of the Department, or
(ii) is a member of the immediate family of one or more named officials of the Department and that he or she shall not liaise, discuss or otherwise relate with such an official any matter relating to his or her immigration practice or case;
(iii) in the previous twelve months he or she has not been an officer of the Department with responsibility relating to the implementation or administration of the Act.
(c) has knowledge of the Act, these Regulations, the Refugees Act, 1998 (Act 130 of 1998) and the South African Citizenship Act, 1995 (Act 88 of 1995) and
(i) has at least once every three years passed a written examination administered by an Association and has been found to be suitably competent, or
(ii) being already a registered immigration practitioner in terms of these Regulations, has complied with the continuing education and practice guidelines published by the relevant Association with the approval of the Director-General;
(d) provides a police clearance certificate not older than six months;[154]
(e) pays the processing fees set out in Schedule G;
(f) applies for registration with an Association on a form which contains substantially the Information set out in Annexure 54; and
(g) commits himself or herself in writing to comply with the Code of Conduct.[155]

(11) Upon receipt of the information that a person is a member of an Association together with a copy of such person's application referred to in term of item 10(f), the Director-General shall register the applicant as an immigration practitioner unless
(a) the information contained in the application is in any material respect false or misleading; or
(b) the applicant has been convicted of any offence under the Act or contemplated in Schedule I or II of the Act; or
(c) the applicant has in the three years immediately preceding been a public servant who was dismissed for misconduct or resigned from the public service while facing disciplinary proceedings instituted by his or her employer.

(12) An applicant shall be informed in writing by the relevant Association or the Director-General, as the case may be, if his or her application is refused, and of reasons for such refusal.

(13) Any immigration practitioner registered in terms of this item must, within 14 days, inform the Director-General of any change in business address and return the certificate of registration referred to in item 4, upon receipt of which the Director-General shall within 14 days issue a new certificate reflecting the new address.

(14) After consultation with the relevant Association, the Director-General shall cancel or suspend the registration of an immigration practitioner who
(a) materially fails to comply with the provisions of the Act or these Regulations;
(b) is convicted of any offence under the Act or Schedule I or II thereto;
(c) has been registered on the basis of having provided information materially false or misleading; or
(d) does not comply with the provisions of the Code of Conduct;
provided that
(e) the relevant Association should offer the opportunity to the person concerned to be heard in a hearing prior to the consultation with the Director-General and
(f) the person concerned may appeal to the Minister if he or she did not receive the benefit of the hearing contemplated in sub-paragraph (e) or upon showing extraordinary circumstances which indicate a prima facie case that the provisions of this paragraph have been substantially and

materially not complied with.

3. Register of Immigration Practitioners

(1) An Association shall keep a register in which it shall record the names and addresses of all persons who have been registered as immigration practitioners or whose registration has been cancelled and shall make such register available to the Director-General.

(2) The register shall be updated on a monthly basis and a copy of the updated version of the register shall be open for public inspection during office hours once a week at the headquarters of an Association and shall be made available on the Internet by such Association.

(3) The Director-General shall receive and maintain the information contemplated in paragraphs (1) and (2) and compile it in a roll of immigration practitioners.

4. Certificate of Registration

(1) Upon registration of an immigration practitioner, the Director-General shall issue a certificate, which contains substantially the information prescribed in Annexure 55.[156]

(2) A certificate issued under paragraph (1) must, within 14 days after an immigration practitioner's registration is cancelled, be handed over to the Director-General.

(3) Any person who intentionally fails to comply with the provisions of sub-item (2) shall be guilty of an offence and be liable on conviction to a fine or to imprisonment for a period not exceeding 12 months.[157]

(4) A certificate issued in terms of paragraph (1) shall be valid for a period of three years from the date of issue.

(5) Failure to submit a complete application for an extension of such a certificate within the validity period shall cause the registration to become null and void.[158]

5. Transitional and Final arrangements

(1) An immigration practitioner shall carry professional liability insurance with a minimum cover of R500 000 from a registered insurance company.[159] Proof of such indemnity shall be submitted to the relevant Association and the Director-General within three days of registration.

(2) Any person who on the date of commencement of these Regulations is registered as an immigration practitioner in terms of the Regulations made in Terms of the Aliens Control Act, 1997 (Act no.96 of 1991) as amended, shall be deemed to be registered as such under these Regulations, provided that such registration shall be cancelled if the immigration practitioner concerned fails to

(a) notify the Director-General in writing within 30 days of the commencement of these Regulations that he or she commits himself or herself to the Code of Conduct

(b) become a member of an Association within 60 days;[160] and

(c) successfully take the test referred to in item 2(10)(c).[161]

6. Miscellaneous[162]

(1) An immigration practitioner may authorize an agent, including but not limited to an employee, to hand over or receive documentation from the Department, provided that at all relevant time such agent is in possession of

(a) a letter from such immigration practitioner authorizing him or her to hand over and/or receive documentation from the department, which letter shall not be older than two months;

(b) authenticated copy of a valid registration certificate of such immigration practitioner; and

(c) valid identification document in terms of the Identification Act, 1997 (Act No 68 of 1997).

(2) An Association shall have the power to file charges against anyone contravening section 46 read with section 49(6) of the Act, or otherwise request the assistance of the South African Police Service in respect thereof.

Part "B"
CODE OF CONDUCT FOR IMMIGRATION PRACTITIONERS

(1) The Code is intended to regulate the conduct of immigration practitioners. The provisions of the Code are

not intended to substitute any duty or obligation an immigration practitioner may have under common law or statutory law. This Code must be construed as a standard which should inspire ethical conduct rather than merely a collection of provisions .

(2) By subscribing to this Code an immigration practitioner pledges
  (a) to uphold high standards in his or her business;
  (b) to abide by minimum requirements in order to act as a registered immigration practitioner including
    (i) being of good character;
    (ii) being knowledgeable of the provisions of the Immigration Act and its Regulations and related forms and procedures, so as to offer sound, competent and comprehensive advice to client;
    (iii) being able to perform diligently and honestly;
    (iv) being able and willing to deal fairly with clients;
    (v) abiding by standard criteria governing professional fees and disbursements;
    (vi) abiding by the standard of prudent office administration; and
    (vii) being accountable to client.

(3) The Code does not intend to list all possible requirements for a competent and responsible immigration practitioner, but intends to set standards from which, if necessary, other requirements and criteria may be deduced under different circumstances.

(4) An immigration practitioner shall act at all times to pursue with zeal and competence the lawful interests of his or her client, and any conduct falling short of this standard may render him or her liable to de-registration or professional liability.

(5) On all occasions an immigration practitioner must act in accordance with the Constitution, the law and the legitimate interests of his or her client.

(6) An immigration practitioner's professionalism should be reflected in sound working knowledge of the Immigration Act and Regulations, and a capacity to provide accurate and timely advice. An immigration practitioner must treat his or her client fairly and be mindful of a client's dependence on the practitioner's knowledge and experience.

(7) Taking into account the objective and true facts of the case, which the immigration practitioner shall investigate to his or her satisfaction, an immigration practitioner shall be candid and honest as to the prospects of success when assessing a client's request for assistance, in preparing a case or making an application under the Act or the Regulations.

(8) An immigration practitioner shall
  (a) within a reasonable time after agreeing to represent a client, confirm the client's instructions in writing;
  (b) act in accordance with the client's instructions;
  (c) file any application or document on behalf of client without delay;
  (d) keep the client fully and regularly informed in writing of the progress of each case or application he or she undertakes for the client; and
  (e) within a reasonable time after the case or application is decided, inform the client in writing of the outcome of the client's case or application.

(9) An immigration practitioner shall complete the work as instructed by a client unless
  (a) the practitioner and client agree otherwise; or
  (b) the client terminates the practitioner's instructions; or
  (c) the practitioner terminates the agreement for just cause and gives reasonable written notice to the client; or
  (d) the client fails to pay the practitioner's fees which are due and payable, after the practitioner has

given such client written notice of his or her intention of suspending his or her services and at least seven days to make such payment.

(10) Whilst an immigration practitioner cannot be responsible for inaccurate or false information provided by a client, a practitioner must not make statements in support of an application under the Immigration Act or its Regulations or encourage the making of statements, which he or she knows or believes to be misleading, inaccurate or false.

(11) An immigration practitioner must not engage in false or misleading advertising, including advertising which guarantees the success of an application.

(12) An immigration practitioner must not, when advertising, imply the existence of a relationship with the Department of Home Affairs, for example, by using terms such as

(a) "Home Affairs Consultant"; or
(b) "Home Affairs registered Immigration Practitioner".

(13) An immigration practitioner must not intimidate or coerce any person. For example, a practitioner must not engage in

(a) undue pressure;
(b) physical threats;
(c) manipulation of cultural or ethnic anxieties;
(d) threats to family members in the Republic or overseas; or
(e) unwarranted claims of Departmental sanctions.

(14) An immigration practitioner must not unreasonably withhold from a client documents belonging to the client, and, when requested by client, must return to client all documentation relevant to the client's case or application, or copies thereof.

(15) An immigration practitioner should not encourage the lodging of applications under the Act or Regulations which have no likelihood of success.

(16) An immigration practitioner may indicate that he or she is registered, and may describe what the registration process involves. However, a practitioner shall not portray such registration as involving a special or privileged relationship with the Minister or officers of the Department of Home Affairs.[163]

(17) An immigration practitioner shall preserve the confidentiality of any information acquired from his or her client or because of his relationship with such client.

(18) Subject to a client's instructions, an immigration practitioner has the duty to provide sufficient relevant information to the Department of Home Affairs to allow a full assessment of all the facts against the relevant criteria.

(19) An immigration practitioner shall ascertain the correct fee for an application under the Act or Regulations and inform the client accordingly.

(20) An immigration practitioner should not submit applications under the Act or Regulations without the required supporting documentation.

(21) An immigration practitioner shall not charge fees beyond the criteria established by the Association of Immigration Practitioners to which he or she belongs, or, beyond those which are reasonable under the circumstances of the case. An immigration practitioner must provide his or her client with a statement or estimate of fees and any applicable disbursement at the commencement of his or her activity for such a client.[164]

(22) An immigration practitioner shall advise clients of the method of payment of fees, including Departmental fees. Any disbursement made by a practitioner, including but not limited to translation or expert's fees, shall be authorized by the client prior to their being incurred.

(23) An immigration practitioner shall inform clients that they are entitled to receive copies of the application and any related documents. A practitioner may charge a reasonable fee for any copies provided.

(24) An immigration practitioner shall ensure that clients have access to an interpreter where necessary.

(25) An immigration practitioner must respond to a request for information from the Department of Home Affairs within such reasonable time as specified by the Department.

THIS CODE OF CONDUCT SHOULD BE DISPLAYED PROMINENTLY IN THE IMMIGRATION 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 CAN BE MADE IN WRITING TO:

ASSOCIATION OF IMMIGRATION PRACTITIONERS
[of which the specific practitioner is a member]
Address

OR

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

SCHEDULE G
FEES

(1) The Department may levy fees in respect of the applications for permits, certificates, visas or other services in terms of the provisions of the Act, as set out in the table below.[165]
(2) Fee exacted outside the Republic shall be paid in the legal tender of the foreign country concerned on the basis of the USD or Euro values set out in the table below.
(3) Notwithstanding what is set out in the table below, no fee shall be levied in respect of a permanent residence application on the ground of a spousal relationship or in respect of other permit's application when the applicant is the spouse of a citizen or resident.
(4) All fees are non-refundable.

SERVICES RENDERED	FEES		
	R	USD	EU
1. Confirmation of permanent residence status	63-00	7	6
2. Application for a visa in terms of section 11(1)(a), or for a visitor's permit in terms of section 11(1)(b)(ii) of the Act	425-00	47	
3. Application for a transit visa in terms of section 24(2) of the Act	425-00	47	43
4. Application for a visitor's permit by an illegal foreigner in terms of section 11(3) of the Act	850-00	--	--
5. Extension of a visitor's permit granted to an illegal foreigner in terms of section 11(3) of the Act	425-00	47	43
6. Granting of a visitor's permit in terms of section 11(1)(b)(i) of the Act	Free	--	--
7. Application for a renewal of a visitor's permit in terms of section 11(1)(i) of the Act	425-00	47	43
8. First application for a study permit in terms of section 13 of the Act	425-00	47	43
9. Subsequent application for a study permit in terms of section 13 of the Act	425-00	47	43
10. First application for a relative permit in terms of section 18 of the Act	425-00	47	43
11. Subsequent application for a relative permit in terms of section 18 of the Act	425-00	47	43
12. First application for a retired person permit in terms of section 20 of the Act	425-00	47	43
13. Subsequent application for a retired person permit in terms of section 20 of the Act	425-00	47	43
14. First application for a work permit in terms of section 19 of the Act	1 520-00	169	152
15. Subsequent application for a work permit in terms of section 19 of the Act	1 520-00	169	152
16. First application for a corporate permit in terms of section 21 of the Act	1 520-00	169	152
17. Subsequent application for a corporate permit in terms of section 21 of the Act	1 520-00	169	152

18. First application for an exchange permit in terms of section 22 of the Act; provided that the fee is not payable where a reciprocal exchange agreement grants exemption from payment of fees	425-00	47	43
19. Subsequent application for an exchange permit subject to the proviso in item 19	425-00	47	43
20. First application for a diplomatic permit in terms of section 12 of the Act;	----	--	--
21. Subsequent application for a diplomatic permit	----	--	--
22. First application for a treaty permit in terms of section 14 of the Act; provided that the fee is not payable where a reciprocal treaty agreements grants exemption from payment of fees	425-00	47	43
23. Subsequent application for a treaty permit subject to the proviso in item 22	425-00	47	43
24. Application for a certificate in terms of section 9(3)(c)(i) and 31(2)(c).	425-00	47	43
25. Application for a permanent residence permit(s) in terms of sections 26 and 27 of the Act, per individual or per family. Provided that this fee is waived in respect of an applicant who is the spouse, a partner in a spousal relationship, or a dependant child of a person permanently and lawfully resident in the Republic	1520-00	169	152
26. Application for the extension of a period of absence from the Republic exceeding three years in terms of section 28(c) of The Act	63-00	7	6
27. Application for permission to a permanent resident in terms of section 27(a) and (c) of the Act to change occupation	1 012-00	112	101
28. Application for the extension of the period within which to take up permanent residence in the Republic in terms of section 28(d) of the Act	1012-00	112	101
29. Processing fee for a first application to be registered as an immigration practitioner in terms of Schedule F of these Regulations to be paid to the relevant Association, provided that the fee for a re-write of the test contemplated in Schedule F, item 2(10)(c) shall be R1 000-00[166]	3 000-00	---	---
30. Processing fee for a subsequent application to be registered as an immigration practitioner in terms of Schedule F of these regulations to be paid to the relevant Association	500-00	---	----
31. Processing fee for an application to change the conditions of a permit other than a change of status.	425	47	43

* For purposes of these Regulations, the Rand /US dollar and the Rand/Euro exchange rates are stipulated

SCHEDULE H : FOREIGN CUSTOMARY UNIONS AND MARRIAGES

I. FOREIGN CUSTOMARY UNIONS

Foreign country	Type of customary union and supporting documentation
Canada	*De facto* common-law relationships registered in Nova Scotia and Quebec only, proven by a sworn affidavit that the unmarried couple has lived together in a conjugal relationship for at least one year
Costa Rica	*De facto* unions proven by a sworn declaration made to a Family Judge
Democratic Republic of Congo	Customary unions where the woman has freely consented in the presence of both families and witnesses, the man or his representative has paid *lobola* to the parents or representatives of the woman, and both have reported to the legal authority, proven by a certificate of such authority endorsed for validity by a consular officer of that foreign country in the Republic
Finland	Same sex partnerships proven by a Registered Partnership Certificate and an extract from the National Population Information System issued no later than 90 days from its submission to the Department
France	Life partnership and same sex life partnership proven by an affidavit of the couple concerned endorsed for validity and effectiveness by a consular officer of that foreign country in the Republic
Iceland	Registered cohabitation of a couple of the opposite sex proven by certificate issued by the National Registry upon declaration and registration Same sex registered partnership, proven by a certificate of registration with a Magistrate or his or her deputy
Indonesia	Polygamous marriages under Islamc Syari'ah Law only proven by a Marriage Certificate Quotation issued by the Office of Religion Affairs, or a letter stating the number of the Marriage Certificate Quotation accompanied by a letter from the Police reporting the loss of the Quotation
Hashemite Kingdom of Jordan	Polygamous marriages (up to four) proven by a marriage certificate for each marriage
Kuwait	Polygamous marriages proven by a marriage certificate for each wife
Lebanon	Polygamous marriages proven by the status of "polygamous" recorded in the man's Family Record In case of a marriage contracted under another citizenship, if the person concerned has multiple citizenship, proven by proof of a contracted marriage issued by Ministry of Interior.
Malaysia	Polygamous marriages, among Muslims only, conducted with judicial consent proven by evidence of such judicial consent and endorsed for validity by a consular officer of that foreign country in the Republic
Mali	Polygamous marriages proven by a marriage certificate issued for each wife
Morocco	Polygamous marriages under Islamic Sharia Law proven by documentation issued for each wife
Netherlands	Homosexual or heterosexual registered partnership
San Marino	*More uxorio* cohabitation documented by the Office of Vital Statistics by virtue of family status records
Saudi Arabia	Polygamous marriages based on Sharia Law proven by a marriage contract issued for each marriage
USA	Affidavit of a lawyer in good standing in the State concerned, stating that the State. concerned recognizes common law marriages, the couple concerned resides in such State and that he or she has direct and personal knowledge that the couple concerned is in a common law marriage having satisfied all the relevant legal and factual requirements.

Venezuela	Non-marriage union between the opposite sex proven by a certificate of legal recognition if declared before the relevant authorities and endorsed for validity by a consular officer of that foreign country in the Republic

II. FOREIGN MARRIAGE CERTIFICATES

Foreign country	**Documentation**
Argentina	Marriage Certificate issued by the Registrar of the Civil Status and People's Capacity (divorce will be noted in the margins)
Austria	Marriage Certificate
Belarus	Marriage Certificate
Bulgaria	Certificate of Marriage issued by the local Municipal Council
Canada	Marriage Certificate issued by provincial/territorial ministry
People's Republic of China	Marriage Certificate
Costa Rica	Marriage Certificate issued by the Civil Registrar
Democratic Republic of Congo	Marriage Certificate
Finland	Marriage Certificate or an extract from the National Population Information System (divorce is registered in NPIS)
France	Marriage certificate or a notation on the birth certificate (divorce will be noted on both certificates)
Germany	Marriage Certificate "Heiratsurkunde"
Iceland	Certificate of Marriage issued by the National Registry
Indonesia	Marriage Decree Quotation issued by the Civil Registrar's Office or a letter quoting the number of the Marriage Decree Quotation accompanied by a letter from the Police reporting the loss of the Quotation
Ireland	Marriage Certificate
Italy	Marriage Certificate
Hashemite Kingdom of Jordan	Marriage Certificate issued by the Department of Civil Status or an official Family Document
Korea	Copy of the Family Register issued by the relevant provincial government office
Kuwait	Marriage Certificate
Lebanon	Marriage Certificate issued by Ministry of Interior, and registered in the husband's Family Record . Wife's passport will show the full name of her husband.
Malaysia	Marriage Certificate - a divorce decree is endorsed on the Marriage Certificate
Mali	Acte de mariage / Marriage Certificate
Morocco	Contract issued by two Aduls (officially recognized religious Clerks), authenticated and registered at a regional court
Nepal	Marriage Registration Certificate issued by the Local Government Office or the Court
Russia	Marriage Certificate and/or stamp in passport of citizen
San Marino	Certificate of Marriage and abstract of the Act of Marriage and/or a Certified Copy of the Act of Marriage issued by the Office of Vital Statistics. Marriage and divorce are annotated on the Birth Certificate.
Saudi Arabia	Marriage contracts
Spain	Certificate of Civil Register or the Family Book
Thailand	Marriage Certificate
Tunisia	Contract of Marriage

Turkey	Marriage Certificate and entry in personal registry at Ministry of Internal Affairs
United Kingdom	Certified copy of the entry in the marriage register
USA	Marriage Certificate from the State concerned
Venezuela	Marriage Certificate issued by the relevant municipal authority

SCHEDULE I : COUNTRIES IN YELLOW FEVER ENDEMIC AREAS REQUIRING VACCINATIONS

AFRICA

Angola
Burundi
Benin
Burkina Faso
Cameroon
Central African Republic
Chad
Congo
Democratic Republic of the Congo
Equatorial Guinea
Ethiopia
Gambia
Gabon
Guinea
Guinea-Bissau
Ghana
Ivory Coast
Kenya
Liberia
Mali
Niger
Nigeria
Sao Tome and Principe
Senegal
Sierra Leone
Somalia
Sudan
Rwanda
Tanzania
Togo
Uganda

SOUTH AMERICA

Bolivia
Brazil
Colombia
Ecuador
French Guyana
Guyana
Panama
Peru
Surinam
Venezuela

ENDNOTES[167]

In terms of section 7(1)(c) of the Act, hereinafter is a summary of the comments received in respect of the draft Regulations published on 22 April 2003 in Government Gazette 24776 [the "draft regulation"] which have not been accommodated and the reasons for their rejection. They are set out as footnotes to the primary sub-regulation to which they pertain or in respect of which they were made. Comments which related to proposed amendments of the Act or to the functioning of the Department or which were otherwise not relevant to the making of regulations have been noted, but, as they are not part of this procedure, are not being addressed here. I have not summarized and reacted on comments which, because of their formulation or content, did not appear to be capable to be dealt with in terms of section 7(1)(c) of the Act. I have applied my mind to the comments received on the basis of the intrinsic merit of the point raised or the argument made, and not on the basis of the influence or nature of the entity commenting or the number of comments received in respect of any given issue, as I am mindful that for each person criticising a provision there may be many more silently approving it. In terms of section 7(1)(c) of the Act, public comments which have been accommodated, or comments not made by the public but within the context of interdepartmental consultations or by the Department, have not been summarised and no reason has been provided for their rejection. The following entities have commented on the draft Regulations:

PERSON	**SYMBOL**
American Chamber of Commerce	ACA
Association of Overseas Seasonal Visitors	AOS
Board of Airline Representatives of South Africa	BAR
Business South Africa	BSA
Cape Town Regional Chamber of Commerce & Industry	CTR
Company for Immigration	CFI
COSATU/NUM	CON
Craig Kinsman & Associates	CKA
Eisenberg & Associates	E&A
Good Hope Studies	GHS
Harrison Ryalls, B	HRB
Herold Gie Attorneys	HGA
Immigration Relocation 4U	IRU
Intaglio - Immigration & Financial Services	INT
International Business Network	IBN
Law Society of the Northern Provinces	LSN
Payroll Author's Group	PAG
PricewaterhouseCoopers Inc	PWC
Relocation Africa	RLA

SA-Canada Chamber of Business	SAC
South African Human Rights Commission	SAH
Shamsoo's Agencies	SHA
United Nations High Commissioner for Refugees	UNR
University of Cape Town	UCT
van Dam, Alfred	AVD
Waters, Val and Denis	VDW

I have taken into account the advice I received from the Immigration Advisory Board ["IAB"] and, where applicable, I have indicated in the relevant Endnote, or portion thereof, why I have not followed the IAB's advice. I have summarized and commented on certain proposals of SAH because of the relevance to the public debate, even though, since SAH is an organ of State, it would not fall within the scope of section 7(1)(c) of the Act. The Portfolio Committee on Home Affairs ["PCH"] has also forwarded to me certain comments. In its cover letter PCH indicated that it referred the draft regulations to a State law advisor for his legal opinion which the PCH forwarded to me. Such opinion relates to points of law affecting the scope of regulation-making and whether certain regulations fall within such scope. However, such opinion was formulated on the basis of the regulation-making power set out in section 52 of the Act rather than section 7 of the Act, the latter being broader than the former. I have considered such opinion and received legal advice that has satisfied me that these Regulations are entirely *intra vires* of the Act and within the parameters of section 7(1). I have taken the opportunity of these Endnotes also to clarify issues relating to the interpretation and implementation of the Act and these Regulations[168].

1.
The purpose of an extension ought not to be that of avoiding a renewal and the burden thereof, but to accommodate short-term or possibly unforeseen circumstances which justify the foreigner maintaining his or her status, but which do not justify such foreigner having to go through the burden of a renewal process.

2.
The IAB advised me that it would be more appropriate for Regional Directors to be appointed by the Director-General. I disagree. In terms of these Regulations, Regional Directors will be carrying out executive functions, and therefore, at least nominally, they must be directly accountable to the Minister. In terms of regulation 14(4)(e), the Director-General is responsible for the uniform application of the Act and these Regulations and, therefore, has the power of instructing Regional Directors on how to exercise their functions. However, this is not a departure from general criteria of administrative discipline, accountability and chain of authority, for, I , as the Minister, appoint Deputy Directors-General and Chief Directors who are, nonetheless, accountable to the Director-General.

3.
LSN complains that several of the Annexure do not provide sufficient space to write in the required information. However, these Regulations are merely prescribing the contents and general layout of forms to be used by the Department which, once printed and distributed, may vary both in format and details of layout. Similarly, it is acceptable for applicants to use forms downloaded from the Department's Internet site or printed by them, for as long as their content and general layout complies with what is set out in the Annexure. PWC requested that the Regulations require that the chartered accountant be independent from the employer and not be one of the employer's employees. However, PWC objects to the text of the Act rather than that of the Regulations. I cannot reduce the scope of the statutory definition of chartered accountant by Regulations, nor do I wish to do so as a matter of policy, as I have no evidence of improper use or abuse of powers by chartered accountants who are employed by applicants acting on behalf of their potential employers, nor do I have at present a reason to believe that a professional working within an organization would be any less bound by the ethical standards of his or her profession.

4.
E&A requested that an application may be lodged in the place where the attorney or the Immigration Practitioner representing a foreigner resides. I cannot accede to such a request because it would break the chain of permit issuance and permit monitoring and enforcement, while reducing the capacity of the relevant Regional Director to assess circumstances relevant to his or her territory. In respect of this sub-regulation as well as sub-regulation (7), IBN requested the clarification of whether the handing in of an application must be done personally by the applicant, or his or her Immigration Practitioner, or attorney or, whether such persons may use a messenger. The Regulation allows both handing over and mailing and the latter employs the postal system as well as couriers as agents. Therefore, also the handing over may take place by means of an authorised courier or messenger. The burden will remain on the applicant to prove that the application has been handed over in compliance with this Regulation.

5.
LSN is incorrect in reading this provision as requiring an applicant to leave the Republic before the expiry of his or her valid permit pending the outcome of a change of status or application. Consistently with the Act, this provision requires a foreigner to have a permit while in the Republic, and clarifies that an application for a permit is not a permit. Under the Aliens Control Act, the legally questionable practice developed of allowing foreigners to stay in the Republic without a permit pending the outcome of an application, which prompted a number of subsequent vexatious, frivolous and unfounded applications. In the context of the Act this is not possible. However, a visitor's permit is available for those awaiting the outcome of a pending application, which, coupled with target time periods for the processing of an application, should avoid any unreasonable inconvenience to the applicants.

6.
IRU, while conceding that the majority of applications can be finalised in thirty days, expresses its concern that this provision may lead to numerous queries and possible court cases. As I indicate elsewhere in these Endnotes, this sub-regulation does not set out a deadline but rather a target date which underpins the obligation of best efforts, as evidenced by the word "endeavour". It might be the case that pressure will be placed by clients on the Department when such target dates are not complied with, but that is part and parcel of our Department's commitment to service delivery and accountability. Court cases should not be regarded always as an evil as they provide protection for customers' rights and expectations.

7.
E&A raised a general comment which I address here as this sub-regulation, read together with regulation 50(6), answers it. E&A requested that not only the Regulations but also the rules guiding administrative decision making be published as Regulations. It is the policy underpinning these Regulations that any requirement which may be binding on applicants be part of these Regulations and that nothing beyond these Regulations may be binding on applicants or provide for additional requirements or limitations. Internal guidelines must remain internal and irrelevant to the rights and obligations of third parties, if we are to avoid the improper administrative practices which developed under the now repealed Aliens Control Act of 1991. Therefore, I see no reason to make provision to require that internal guidelines should be published. Any such guidelines substantially affecting the rights and obligations of applicants would contravene this sub-regulation or regulation 50(6) and be invalid. Moreover, regulation 14(7) addresses E&A's residual concerns.

8.
IBN and E&A requested that an application could be submitted if signed only by the attorney or the immigration practitioner and not the applicant. I could not agree to this suggestion because such an approach would make it difficult to prosecute applicants who render false information in their applications. I do not feel that the provision creates undue hardship for the applicants, because they are in any case required to sign a power of attorney, at which time they can also sign their application. The IAB advised me to delete the word "advocate" on the basis of an advocate having to be instructed by an attorney. However, that does not prevent an advocate from being able to sign an application in terms of this regulation, in which case, the relevant power of authority will be that given to the instructing attorney.

9.
E&A suggest that the relationship between sub-regulation (10) and sub-regulation (14) ought to be clarified by virtue of a textual amendment which indicates that (14) is subordinate to (10). I do not think this is necessary. Sub-regulation (10) applies from the time when an application is complete, while sub-regulation (14)(b) relates to the process leading to an application becoming complete. It is obvious to me that in processing an application in terms of sub-regulation (14)(a), the Department shall comply with sub-regulation (10). I am satisfied that this interpretative ruling meets E&A's concern.

10.
SHA has pointed out that certain countries which recognise polygamous marriages under Islamic Sharia law have not been included in Schedule H. Such omission does not intend to indicate that any of such customary union ought to be any less recognised. However, the information provided for the formulation of Schedule H has been supplied by foreign Embassies and High Commissions in the Republic, some of which did not oblige to the Department's request for information. As more information is forthcoming through official channels I will be promoting the amendment of the Regulations to rectify any omission in Schedule H. Those with the relevant information are invite to assist in this regard.

11.
LSN questions who would be an officer of the Department and asks whether a cleaner would be included. An officer is not just an employee but someone who by virtue of his or her position is partially charged with the functions of an office, which is a structure through which executive power is exercised. It is common in the practice of the Department to appoint individuals who are not employees of the Department to carry out the Department's executive authority, for instance in respect of custody or deportations of illegal foreigners under the supervision of officials of the Department. LSN complains that no sufficient guidelines have been prescribed to determine when persons who are not officials of the Department may be appointed as Immigration Officers. I beg to differ. The matter will often depend on practical need and capacity issues under vastly different and ever-changing circumstances throughout the Republic and in foreign missions. For instance, officials of other Departments may need to be designated for such purposes in missions on short notice. Therefore, the guideline of sub-regulation (3) which requires necessity rather than mere expediency or preference, is adequate and responsive to the nature of the matter.

12.
INT incorrectly states that these Regulations do not cater for customary marriages which are in fact dealt with under customary unions.

13.
The issue has been raised of whether the Department should concern itself with parental or custodian's consent in respect of minors applying for visas or permits under the Act or for admission. The Department should not have, nor raise, such a concern because a minor in possession of a passport or other document validated for international travel will have received the necessary parental or custodian's consent to have such document issued to him or her, or shall be deemed to be in such a position. By giving their consent to hold and/or keep a passport or other type of document enabling international travel, those exercising parental or custodian's authority are deemed to have consented to all that which such a document entitles the minor to do.

14.
BAR requested a specific listing of excluded UN agencies be published for clarity sake. However, in light of the number of such agencies and their frequent change of name, this would not provide greater clarity. This sub-regulation is clear in referring to the document to be issued by the United Nation as an institution to the exclusion of those issued by any and all UN agencies under their own name, except the document issued by the UNHCR referred to in regulation 6(1).

15.
The IAB has advised me to clarify that the SAPS is not necessarily involved in financial administration in terms of the Act and these Regulations and should not be entitled nor obliged to receive fines, fees or other money. That

is the case. However, different arrangements may be made in terms of delegation and by virtue of the powers of the manager of the port of entry. In such case, the SAPS would need to agree to a delegation of powers at the specific port of entry. The IAB advised me to add the words "where this service is available" at the end of sub-regulation (2). However, under the law, our Government has the responsibility to provide the full range of services which ensure that a port of entry operates as a port of entry, and this may need to be achieved by organs of State working together and utilising mutual delegations of functions to overcome existing budgetary and staffing constraints.

16.
The IAB expresses the concern that the breadth and width of this provision may be unreasonable. However, such breadth and width is expressly defined by what is reasonable. The breadth and width of this provision is dictated by the Department's past practical experience which includes people who cross borders on foot effectively leading with them other people who by means of contractual or other arrangements have agreed to be carried or led by them. In such cases such group leaders have the power to comply with some of the obligations applicable to other conveyances, again, to the extent reasonable and practical.

17.
INT objects to the language of Schedule 1 requiring mutual financial support when one has the means to do so. The nature of the objection remains unclear. Nonetheless, it can be pointed out that such an obligation reflects established common law and legal obligations flowing out of a marriage and that the legislative intent is that of extending the benefits of marriages to lifetime partnership because of the similarities of the two situations in spite of the choice of the life partners not to enter into a marriage. Therefore, it is legitimate for this regulation to identify a life partnership by means of features which make it in substance, if not in form, similar to a marriage.

18.
CFI obliquely states that it would be preferable that migratory influxes are representative of different areas of the world and different social strata, rather than concentrating primarily on more affluent foreigners who are more likely to provide a contribution towards our country's growth. This comment requires a general statement of policy which affects also the criteria underpinning the selection of those countries of which the citizens are visa exempt. The main thrust of immigration policies lies in our country's national interest and, therefore, the criteria underpinning the selections of temporary or permanent immigrants must reflect the notion of such foreigners being needed or beneficial for our country or our nationals. Such criteria are set out in the requirements governing the issuance of temporary or permanent residence permit. Such criteria are not embodied in visa requirements. As an authorization to proceed to a port of entry for examination, a visa is not a tool to be employed to screen or select who qualifies for a temporary or permanent permit, which function rests exclusively in permit requirements. Visas serve the function of an advanced form of screening for the same purposes for which an examination is conducted by the immigration officer. Therefore, visa requirements are primarily applied in the national interest, rather than on the basis of reciprocity, and are applied in respect of countries which, on statistical, empirical or analytical bases, are likely to produce a considerable number of potential illegal foreigners who need to be turned away at the ports of entry or requested to leave the Republic by means of administrative action or deported. The imposition of visa requirements does not reflect in any way on the foreign relations between South Africa and the country concerned, nor is it a reflection of the level of friendship or social and economic exchanges between the two countries. Nonetheless, there may be situations in which foreign policy considerations override the criteria which, from an immigration control viewpoint, would be utilized in the selection of visa exempted country. For instance, in the draft Regulations Taiwan was listed amongst the visa exempted countries and, for the purposes of the Act and from an immigration control perspective, such country qualifies for such visa exemption. However, the Minister for Foreign Affairs with the backing of Cabinet has indicated that there are overriding foreign policy considerations which require Taiwan not be visa exempted. The withdrawal of the visa exempt status of a country is indeed extraordinary in immigration practice and must be justified only by compelling and overriding reasons, and I am therefore not inclined to follow suggestions that I take such action in respect of certain countries until consultations with the relevant Ambassadors have taken place to ascertain how the relevant problems may be dealt with or compelling reasons are shown. INT argues that there is a contradiction between item 4 of Schedule C and section 11 of the Act, which I fail to see. PWC requested that this exemption not be limited to a 90 day length of intended stay but be for an unlimited length of stay. Arguably this would apply in respect of long-term visitor's permits and therefore

only for an up to three year stay. I am not aware of other countries receiving migratory fluxes adopting such a system, while the 90 days visitor's visa exemption is standard internationally. I do not see it being a burden for someone who intends to stay in South Africa for such a length of time to apply for and obtain a visa. The visa is also required to enable verification of the requirements relating to a long-term visitor's permit, so as to avoid inconvenient and cumbersome examinations at ports of entry. The IAB made the recommendation that Schedule C and D be reviewed through a process of consultation with the IAB which intends to involve in its work relevant stakeholders with a view to making a recommendation with relevant motivation on possible amendments. The IAB is welcome to undertake such an exercise. However, I would first like to receive a recommendation for my review in respect of the relevant policy parameters which, in the IAB's opinion, ought to underpin decision making in this matter, as I feel that the determination of such parameters may be preliminary to fact finding. Should the result of such exercise determine the need for further amendments of Schedules C or D, the IAB may make such a recommendation to such end in terms of section 7(3)(b) of the Act. I would also request the IAB to conduct an investigation on the requirements, feasability, pros and cons of a universal visa policy. Prior to my final submission of the indented regulations to the IAB, the IAB made a recommendation suggesting that Schedule C and D of the draft regulations be corrected in certain ways, which I have registered. However, I cannot accept the IAB suggestion and revert to the incongruous system developed during apartheid and maintained under the Aliens Control Act requesting citizens of visa exempt countries to apply for a visa when travelling on their diplomatic, service or official passports, which would make these esteemed passport holders worse off and more encumbered than their ordinary co-nationals. The IAB also suggested that a visa exempt category be created for those "involved" with any of the many agencies or instrumentalities of the United Nations but not travelling on UN passport or travel document, which, *inter alia*, would include contracted consultants. This category would we too vague, large, undefined and difficult to administer. The AIB further indicated that further amendments of Schedule C and D should be the product of a single consensus position of government, suggesting that such consensus position ought to be achieved prior to the submission of Schedule C and D to the IAB, possibly by resorting to Director-General clusters, Ministerial clusters or interdepartmental discussion fora. However, as I have indicated more amply in the Endnote to regulation 15(1), this approach would fail the IAB's own duties, as the IAB is the statutorily designed venue where these discussions ought to take place. Schedule C and D are not any different from other regulations which also affect the line function responsibilities of several departments. If the entire set of regulations had to be agreed amongst all relevant organs of State prior to its being brought to the IAB, the statutory purpose of the IAB would be defeated and the bulk of the IAB members would have its hands tied. It would also place the IAB's members who do not represent government in an unfair and untenable position. I have given a full mandate to the IAB to review Schedule C and D once it has presented me with an acceptable set of logical, policy and administrative parameters which should thereafter guide such a process of review, at the end of which Schedule C and D may or may not become the object of further amendments to be made to these Regulations. As it now stands, I have no reason to believe that anything in Schedules C and D is problematic.

19.
INT questions the difference between this fee and the one contemplated in Schedule G for the issuance of a visa, which is lower. It is appropriate for this fee to be higher to create a disincentive to avoid the visa requirement and to defray the cost of the resources necessary to administer it.

20.
The IAB suggests that this figure is arbitrary and should be reassessed in terms of the cost of an onward air ticket. However, by necessity, each uniform figure will better suit some circumstances rather than others. Even the cost of an air ticket varies enormously depending on destination. This figure has been achieved by averaging the direct and indirect costs of deportation. As the IAB correctly points out, this deposit may be recovered at a mission.

21.
During the regulation-making process, in response to public comments received, I formulated a draft regulation 10(7) which I then deleted from the draft I submitted to the IAB for its final consideration, pointing out such deletion. The IAB objected to such deletion pointing out that such regulation significantly expressed the concern of the Act for human rights and fair procedures and embraces the rights of both legal and illegal foreigners and should therefore be retained as regulation 10(7). Such draft sub-regulation read

"(7) A foreigner, including an illegal foreigner, subjected to an examination shall at any time have the

right to request that his or her examination be halted and resumed once he or she may be assisted at his or her cost by an attorney or an immigration practitioner of his or her choice, provided that:

(a) such foreigner shall accept to be detained for the entire period of the examination if so decided by the relevant immigration officer, and

(b) no examination shall be delayed for longer than twenty four hours on account of this sub-regulation."

I deleted this draft sub-regulation because the delay in the examination that it causes may impair the possibility of returning illegal foreigners to the same aircraft or other ship on which they arrived, and because of my Department's opposition to it on practical grounds.

22.

CON objects to this provision arguing that the Department ought not to impose these fines because the relevant documentation could be assessed by the relevant official and, therefore, the Department would bear no additional cost to the defrayed in terms of section 2(1)(k) of the Act. This is not correct. In addition to considerations relating to added workload, the fact is that officials of the Department are not qualified to perform the functions of a chartered accountant and could not assess matters such as book value or business viability. Therefore, in many cases it is necessary to out-source work to consultants. I have no basis to accept CON's assertion that chartered accountants would be employer biassed. Moreover, I fail to see the clash between the interest of an employer and a prospective employee working together to provide the latter with a work permit to work for the former. The verification by the Department of Labour of the chartered accountant's certification in respect of the industry standard, and, applicable conditions and terms of employment suffices to address the concern about possible bias. The concern that the fee paid in terms of this sub-regulation may be deducted from employees salaries, or wages, relates to illegitimate conduct. CKA suggests that Immigration Practitioners could provide certifications in lieu of the Department in respect of the matters covered in this regulation. However, such a suggestion would not accommodate the statutory provision requiring the Department to do the work, at the request of the applicant. Moreover, I think it is not advisable from a policy viewpoint for Immigration Practitioners to certify components of the application which they need to submit to the Department and which they are responsible for processing through the relevant administrative procedure. I see that as something which can jeopardise the credibility and the reliability of the profession. Moreover it does not seem to be within the schema of the Act, which contemplates certifications only by chartered accountants. However, a suggestion of this nature could be considered as a future amendment to the Regulations at a later time once there is evidence that the newly created and regulated profession has in fact taken root within the new system. These explanations should also satisfy INT's and LSN's questions on the purpose of the fee contemplated in this regulation. LSN argues that it could not comment on this provision as well as regulations 12(1)(a) and 24(2)(a), because it does not have my motivation for making them and requested me to make such motivation available. However, such step is not contemplated in section 7 of the Act and would not be practical, if not possible, to engage in dialogue with all those who now, or in the future may wish to comment on draft regulations. LSN argues that this fee is discriminatory because it does not differentiate between large and small businesses. Setting aside that such differentiation should not be on the basis of size, but profitability, as a larger business is not necessarily more profitable than a smaller one, I cannot see how a Government could exact different fees from its private or corporate citizens for the rendering of the same service. In respect of this regulation, the IAB requests that I clarify that the chartered accountant need not be independent of the employer. I have made such clarification in the relevant Endnote in respect of the regulations to which such clarification more appropriately pertains. I indicated that I do not see the need for a textual amendment of the regulations because the requirement of the independence of the chartered accountant from the employer is not set out in these Regulations and, therefore, in line with Regulation 50(6) such requirement ought not to be read into these Regulations.

23.

LSN asks for clarification on the powers of this official and whether such official would have executive authority abroad. A number of functions of the Department are exercised in missions, and therefore abroad. This function will gather information to guide advanced law enforcement and will promote coordination between the Department and law enforcement agencies in the country concerned. LSN also questions the statutory basis of this provision. A department does not need a statutory basis to employ officials abroad. Nonetheless, section 2(2)(f)(i) and (ii) read with section 3(1)(c) of the Act clearly not only empowers but even mandates the Department to do so.

24.
LSN requests that it be made clear that this provision is subject to section 33(5) of the Act. I see no need for it, as all the provisions of these Regulations are subject to the provisions of the Act which they implement. However, this provision implements sections 2(2)(a) and 3(1)(a) of the Act which specifically refers to workplaces, while section 33(5) refers to places other than workplaces, hence the need for a warrant. The IAB expressed their concern of a legal nature that constitutional considerations will require that entering into workplaces be authorised only on the basis of a court warrant. I disagree, as this would be administratively problematic and is not constitutionally required. Workplaces are open to organs of State required to inspect compliancy with the laws governing them, ranging from health to occupational safety inspections. I am also convinced that the Act, *inter alia* in section 33(9), enables workplace inspections without need for a court warrant, as such inspections should be a matter of routine and are not necessarily based on probable cause to suspect that the Act is being breached.

25.
BSA takes exception to the 60% aggregation arguing that the balance should also be part of the training fund. However, it does so suggesting that certain provisions of the Act are "atavistic residues". I cannot make sense of this comment as all provisions of the Act are equally binding on me and the Act is all equally new and has never been amended. CON objects to this figure without specifying the reasons of its objection. In the absence of arguments to the contrary I feel that a 70% aggregate meets the intended purpose. The IAB raises some concerns which are more directed to the provisions of the Act rather than those of these Regulations. Moreover, the IAB fears that the purpose of these provisions is to bind allocations of the National Revenue Fund. That is not the case as these are merely reporting mechanisms to Parliament which has the final responsibility to allocate what is available in the National Revenue Fund. The IAB suggests that in order to avoid the perception that one wishes to bind Parliament, these figures should be 100% of all the relevant monies collected, but this defies the purpose of the provision in the Act.

26.
LSN questions the phrase "or received through delegation from the Minister" arguing that I do not have the power to make provision on how the Director-General deals with the power I delegate to him or her in terms of section 3(3) of the Act. I beg to differ. Section 7(1) gives the plenary power to determine by means of these Regulations any matter conducive to the implementation of the Act. In terms of section 3(2) of the Act, I have the power to instruct my Director-General on how to exercise any power I have delegated to him or her. Therefore, I am of the opinion that I have the power to make regulations on how the Director-General can deal with powers I delegate to him or her.

27.
CON objects to the existence and content of this sub-regulation on the grounds that it reflects language of the Immigration Bill which was deleted by Parliament prior to its enactment. However, such deletion was made on the basis that the subject matter did not belong in a statute, and was the correct province of regulations. The Act requires a provision of this nature for its correct, predictable and objective implementation because the Act ascribes powers and function to the "Department" rather than the "Minister" and it is, therefore, necessary to determine how and through whom such powers are expressed and actual decisions taken by and attributed to the Department. The content of the provision is consistent with established policy as set out in the White Paper on International Migration published on April 1, 1999. It is also consistent with the schema of the now repealed Aliens Control Act of 1991 in terms of which, as a matter of law, the permitting and issuance of permanent residence permit was done only by Regional Committees while temporary residence was equally dealt with by the Department's Region in terms of the system of administrative guidelines which regulated the matter at the time.

28.
The IAB suggested a textual amendment indicating that the Director-General shall act in consultation with the National Commission of the SAPS "when necessary". However, the function contemplated in this provision derives from section 2(2)(f) which requires cooperation with the Department of Foreign Affairs. It is obvious that in exercising this function the Director-General shall act in harmony with other organs of State, whether under the circumstances that makes it "necessary" to be Foreign Affairs or SAPS. However, the Department has a specific interest in migration matters and carries the specific statutory responsibility of deterring and redressing breaches

of the Act, which responsibility is extended in preventing actions at the international level.

29.
In its advice the IAB suggested that a number of issues raised in these Regulations may require interdepartmental coordination or liaison, with resolution to be finalised through government structures, *e.g.* the various clusters of directors-general, to be able to present the IAB with a unified government viewpoint, arguing that the IAB is not a mediation venue between government departments. I do not agree that this approach is correct in law and surely it does not reflect how I intend the IAB to operate, for, I believe, I have the power to instruct the IAB, which is my advisor, on how it should operate. Because we are still at the foundational stage in the new system of migration control, I felt it appropriate to publically clarify this matter by means of this interpretative Endnote. If government were to come to the IAB with a unified position, there would be no point in the IAB comprising of so many government's representatives directly appointed by the relevant Ministers. Venues such as the DG clusters are not statutory venues and carry no power to exercise executive functions, which power the IAB has. It is within the IAB that the different viewpoints within government ought to be aired and mediated in an environment which enables government to receive the benefit of the inputs of civil society's components. As a statutory body coordinating various departments affected by migration matters, the IAB is in a position of primacy in respect of informal venues organised within government to coordinate interdepartmental matters and cannot be the mere recipient of their work product. By necessity, migration control requires interdepartmental coordination, which accounts for the fact that the Act entrusted this function to the IAB to ensure continuity of coordination, expertise, and dedicated attention, as well as transparency and accountability, in line with our constitutional obligations.

30.
Contrary to LSN comments on the matter, the Promotion of Administrative Justice Act of 200 ["PAJA"] does not apply to the Act and there is no need for this Annexure to incorporate its provisions. PAJA itself excludes from the scope of application of its provisions those statutes which provide alternative remedies or procedures, as the Act does in section 8.

31.
LSN express its concerns that the rights embodied in this notice may not be appreciated and therefore exercised by those who do not speak or read English. In terms of the Constitution, the Department is duty bound to provide any formal written or oral communication also in one of the eleven official languages, at the request of the person concerned. The official language policy adopted by the Department reflects this approach. For further clarity I have dealt with the matter in regulation 50(9). However, it is just practically impossible to provide such notification beyond the eleven official languages and in all the possible languages which a foreigner may speak, which are in the thousands. I do not believe that a foreigner has a right to be notified in his or her language and, in any case, I believe that such a right, if it existed, can legitimately be limited in terms of section 35 of the Constitution. LSN also expresses its concern that the expression "written representation are attached thereto" in Annexure 7 and 8, requires the recipient of the notice to make representations immediately, which is not the case, for such sentence is followed by an asterisk indicating that it may be deleted if not applicable, thereby clearly stating that the recipients may make representations at that time or at any later time within the deadlines contemplated in section 8 of the Act. Nonetheless, I have amended the form. I do not see the need for developing forms for such representations to be made, as LSN suggests, as the content of representation cannot be predicted and anyone can make them in the form and with the content one may deem more appropriate. The time limits set out in Annexure 6 and 7 reflect those set out in section 8 of the Act and they are finalised to that process, not to the time frames provided for in PAJA as LSN suggests, as PAJA is not applicable by virtue of its own provisions. I disagree with LSN's statement to the contrary, as PAJA expressly indicates that it applies in respect of laws, which do not have processes analogous to those set out in section 8 of the Act. I see no need to cross reference these provisions with legislation relating to access to information, as LSN suggests, for such legislation applies by virtue of its own provisions and in drafting laws or regulations one cannot make cross references to everything else that applies to the subject matter concerned, for a reference to one might be deemed to exclude the others and therefore become problematic. LSN also questions the second point of acknowledgement at the end of Annexure 7, arguing that it should include the option of appealing to me as the Minister. However, such option only becomes available after the appeal to the Director-General has been exhausted as one cannot make an appeal to me, as the Minister, while after a decision has become final one can appeal directly to a court. Annexure 7 would not need to be used to

appeal from the Director-General to me, which appeal can be lodged in any written form. LSN also questions Annexure 7 parenthesis, erroneously referred to as Annexure 8, as not allowing for a signature line for the Director-General or the Minister. One of the major tenets of the new system of immigration control is that neither the Director-General nor I, as the Minister, should take decision in actual cases or applications, while it is our responsibility to deal with exceptions, appeals and policy matters, while verifying that Regional Directors take their decisions correctly and in a uniform manner. The IAB queried whether the intention of item 2(d) of Annexure 7 is that of enabling the postponement of the deadline to lodge an appeal or that to make further representation to the Minister. It seems clear to me that the language of section 8(2)(b)(i) of the Act and item 2(d) that item 2(d)refers clearly only to the latter and not the former and that it could not be otherwise.

32.
Because of the declaration of unconstitutionality of section 34(8) of the Act by the High Court, LSN argues that this provision ought to be deleted. However, pending the certification of such declaration of unconstitutionality by the Constitutional Court, section 34(8) is of force and effect, and it is my obligation to give it execution and implement it through these Regulations. The IAB acknowledges the fact that I am awaiting the Constitutional Court judgement but feels that formal procedure should be developed to declare a person an illegal foreigner and for him or her to be notified of such a decision. In order to achieve such a result, the IAB suggests that regulation 16(3) be amended to read "a person at the port of entry determined by due process to be an illegal foreigner...". However, it seems to me that this language would not achieve more than what is set out in these Regulations, as already, the decision of declaring someone an illegal foreigner is an exercise in administrative discretion which, by law, is subjected to due process and appeal procedures. Furthermore, the proposed amendment does not alter the modalities with which such decision is notified, which, I am satisfied, as the IAB seems to be, are adequate under the circumstances of migration control.

33.
INT, IBN, LSN and E&A have requested that a foreigner subjected to an examination may request that his or her examination be halted and resumed once he or she is assisted at his or her cost by an attorney or an immigration practitioner of his or her choice. I could not accede to this request because the delay in the examination that such provision could cause may impair the possibility of returning illegal foreigners on the same aircraft or other ship on which they arrived and at this juncture would pose insurmountable logistical and security problems in respect of areas which are access controlled. I am not aware that such right exists in other democracies. See more amply the Endnote to regulation 10(6).

34.
LSN questions the constitutionality of denying a citizen the right to depart from the Republic. I am conscious that a citizen has the right entrenched in section 21(2) of the Constitution to leave the Republic. However, such right may be limited as would be the case for a citizen who is subject to a warrant for his or her arrest, or is not in possession of a passport, or has been identified by a court as escaping child custody obligations, or is carrying a minor child without the other parent's approval, or is a child not authorised by the relevant custodian to leave the Republic. These are not assessments for my Department or for any immigration officer to perform but will be made in terms of existing laws by either a court of law or another department, and my Department and the relevant immigration officer would merely be the authority executing the decision of other organs of State or of a court of law taken in terms of other laws. The IAB questions the constitutionality of the power of an immigration officer to prevent a citizen or resident from departing. However, if valid, such challenge ought to be directed to the laws empowering other organs of State to make such determination. The expression "for good cause only", clearly intends to state that it is not my Department's decision to prevent anyone from departing from the Republic unless a violation of the Act is involved or of a law my Department administers, such as those relating to passport facilities. On the basis of a request by the Minister of Safety and Security, the IAB has recommended that the entries and departures of citizens be recorded and maintained in a permanent record and that the Act be amended to make that permissible. However, until such an amendment is made to the Act, if that is the will of Parliament, I do not have the authority to make such provision in these Regulations, as the IAB itself recognises that the Act excludes the possibility that the entrance and departure of citizens be recorded. Furthermore the IAB recommends that such provision be introduced or become effective only when adequate legislation is in place regulating databanks to protect individual rights and liberties. The IAB seems to suggest that the Act be amended. I must caution the IAB

not to enter the prerogatives of Cabinet and Parliament. As a statutory body the IAB operates under and in terms of the Act to ensure its implementation. Recommendations of its possible amendment exceed the IAB's statutory responsibilities. The IAB also questions whether the exception for bilateral international agreements contemplated in regulation 17(1)(c) is consistent with section 9(2) of the Act. I believe so, for in exercising my broad powers to provide by regulation what is necessary or conducive to the proper implementation of the Act, I must take cognizance of other sources of law and the whole system of laws. For instance, this type of exemption could apply in the future to international agreements providing for the free circulations of people among certain or all SADC countries.

35.
Because of the erroneous reference in Annexure 9 of the draft regulation to section 31(2)(c) of the Act, LSN incorrectly understood this provision as referring to an authorisation to enter the Republic, at a place other than a port of entry, which can only be granted by the Minister. This exemption only refers to the requirement to be subjected to an examination and it is a deeming provision which deems that the examination performed in connection with the issuance of this exemption continues to be valid and applicable in respect of subsequent entries within the period of the exemption. It does not authorise the holder to enter at a place other than a port of entry.

36.
The key to determining the appropriate temporary residence permit is in the activity to be conducted or the purpose of stay in the Republic. It may be the case that an applicant may wish to conduct several activities or have more than one purpose of stay which fall within more than one permit category. If such multiplicity of activities or purposes is concomitant, the less regulated activity may be subsumed in the more regulated one, as would be the case for tourism, business or being with a relative which may be subsumed within the terms of a work or study permit. However, if concomitant purposes or activities cannot be so subsumed, different permits will need to be issued for each of such activities, as would be the case for work in concomitance with study or medical treatment exceeding three months, provided that under the circumstances the Department is satisfied that each purpose does not deny or collide with the other. Even though conceptually and legally distinct, such permits may be grouped into a single passport endorsement or physical permit form with the adequate notations. If the multiplicity of activities or purposes is sequential, as a rule the person concerned shall obtain an adjustment of status. However, when reasonable, a lesser regulated activity or purpose may be subsumed within a more regulated one when it is only a partial part of, or an incident to, the overall activity or purpose of stay, as would be the case of a relatively short period of tourism, business or stay with relatives following or intermitting a period of study, work or medical treatment for which applicable permits have been issued. It is also possible that an intended activity or purposes may fall under the scope of more than one temporary residence permit, as may be the case for a long term stay which could be accommodated under a visitor's permit, a relative's permit, a retired person permit or a business permit. It is entirely up to the applicant to choose which permit he or she wishes to apply for and obtain, when he or she qualifies for more than one permit. Each of the permits has different grounds and requirements, but they may very well be applicable to the same situation, thereby enabling the applicant to determine which one best fits his or her needs and circumstances. Similarly, in many cases a person intending to work could do so in terms of a general quota permit, a general work permit, an intra-company transfer permit or other work permit, and it will be the prerogative of the applicant to choose from among the work permits for which he or she qualifies.

37.
INT points out that at times different lengths of stay are given to foreigners in the same situation, or even members of the same group. In exercising his or her discretion, an immigration officer should issue a permit for a period of stay no longer than three months, which reflects the intended stay of the foreigner as it appears from the declaration that such foreigner makes, and/or any documentation produced in support, or in place of such declaration, such as a return ticket, an itinerary, a programme of activities in the Republic or reservations in places of overnight accommodation. The immigration officer will not issue the permit for the length of stay asked by the foreigner when he or she has reason to doubt the foreigner has sufficient means to support their intended period of stay or for other good cause. Because of this guideline, I am satisfied that the discretion of the immigration officer is sufficiently circumscribed.

38.
Schedule A makes no provision for a visitor's permit to be issued at a mission because in terms of section 11 of the Act a visa issued at a mission will become a visitor's permit upon admission at the port of entry and therefore the actual permit is issued at a port of entry. In cases of a person being visa exempt, the visitor's permit is issued at the port of entry. If a person wishes to have a visitor's permit effectively issued at a mission, even though such person is visa exempt, for instance to have certainty of the term and conditions of the visitor's permit obtained at the port of entry before travelling to the Republic. he or she may request the mission to issue a visa notwithstanding the exemption, for an exemption does not preclude one entitled to it from requesting a visa. In such case the visa so issued will become a visitor's permit upon admission with the length of stay and terms and condition set out therein. It will the duty of a mission to satisfy such request.

39.
CKA sees contradiction between this provision read with sub-regulation (6) and paragraph (v) of Annexure 15, page 1 under the caption of "Important". I do not see how that could be the case. This regulation requires foreigners to apply at least thirty days prior to the expiry of their status, or makes them eligible for a visitor's permit, exactly because a pending application does not confer status, which only a permit can do, and no foreigner can be legally within the Republic without a status. I have clarified the relevant portion of said paragraph (v). The IAB conveyed to me that "some of its members" feel that a new police clearance from the SAPS should be filed when renewing a permit. In some aspects of its advice the IAB has expressed either majority or minority views or just the views of "certain of its members". I value receiving the full richness of views relating to debates on this matter, even though this is a formal regulation-making process where matters ought to be on record with clarity. I have therefore considered this unorthodox advice and feel that this requirement is not justified because if the SAPS has information about criminal charges against a foreigner, it shall communicate them to the Department in due course, resulting in the foreigner being placed on the so-called "stop list", against which the renewal application will be checked. The additional requirement will burden all legitimate foreigners while there are alternative ways to deal with the lesser number of foreigners who are suspected of criminal conduct by the SAPS.

40.
E&A points out the issue of a hypothetical, extremely important foreigner who does not apply for the extension or renewal of his permit on time, and can only be accommodated with a visitor's permit without being able to work, pending the processing of a new work application. E&A does not suggest the issue ought to be handed. In terms of section 31(2)(d) of the Act, I have the power to waive any requirement set out in these Regulations, which power could be used when justifying reasons of public interest so demand. Therefore, anything that could be done to address E&A's problem within this regulation-making process could be done in terms of such section of the Act. In light of this consideration, I do not think it is good policy to create a special exemption for foreigners who may be regarded by anyone as more important or valuable than others, as I would regard this to be both an inappropriate policy and something difficult to administer. Incidentally, but significantly, I wish to clarify that a visitors permit may be renewed more than once and, in fact, as many times as required for as long as the Department is satisfied with the foreigner's (a) purpose of stay, (b) available financial means and (c) intention and means to depart.

41.
The IAB is concerned about possible confusion stemming from the "other working activities" referred to in this sub-regulation not being "work". The term "work" is defined in the Act in a narrow fashion which excludes a number of activities which fall within the ordinary semantic area of the word "work". A foreign lawyer taking deposition in South Africa for a trial abroad, a foreign businessman negotiating contracts, a foreign quality controller of an international franchise chain checking compliance with the franchise agreement, a foreign physician consulting with a South African doctor on a local case, or a foreign music director, opera singer or play actor performing in our theatres are all undoubtedly working, but are not conducting "work" in terms of the Act. From a legal viewpoint, I see no uncertainty, and I hope that this Endnote may dissipate any terminological uneasiness. I hope that this also dissipates the IAB's concern that one may think that this sub-regulation is trying to amend the Act, which would be both impermissible and impossible, while in fact it stems by necessity out of the Act.

42.
The language of this sub-regulation addresses PWC's concern that "international secondees" who remain employed and remunerated by foreign entities may apply for, and receive visitor's permits, with no need to amend item 9(2) of Schedule A as suggested by PWC.

43.
IBN requested clarification of whether a visitor's permit may be renewed repeatedly. As I also stated in an earlier Endnote, such is the case because there are no limitations contained in the Act and in these Regulations. In the absence of an express limitation, it is the underlying philosophy of the Act and these Regulations to make permits available to those who qualify for them as often as they do. Therefore, I did not see the need for a textual amendment.

44.
IBN requested clarification of the relation of this section to the requirements set out in items 4 to 9, column 4(a) read with item 1 and column 4(e) of Schedule A. What is set out in Schedule A is information and documentation that the applicant must be required to supply. The requirements set out in this provision which are over and above those set out in Schedule A can be imposed on the applicant only on the basis of a request from an immigration officer who has satisfied him or herself that the applicant is likely to become a public charge. The IAB is concerned that the power to conclude that someone is likely to become a public charge is too wide and could be employed arbitrarily and suggests that it be mitigated by requiring that it be exercised "on reasonable grounds". I disagree. First, the determination of likelihood of becoming a public charge is an administrative action and, as such, by law it cannot be arbitrary and must be based on reasonable grounds. I do not need to set out this requirement in the text of the regulation as it is implicit in it, and this Endnote will make it otherwise explicit. Second, the burden of proving financial means is on the foreigners applying for admissions. They need to satisfy the Department that they can comply with such requirement. The determination by the immigration officer is not about whether the foreigners are in fact likely to become a public charge but rather that they have failed to satisfy the Department that they will not become a public charge because they have not given proof of available financial means. Third, the word "likely" suggests more than possibility, but actual probability. Moreover, the IAB also expresses the concern that Annexure A requires proof of financial means indicating that the reference to the requirements of item 1 of Schedule A is incorrect in certain cases which the IAB does not identify. I cannot find anything that is incorrect. It is standard practice that foreigners entering the Republic by air on visitor's permits up to three months be required to be in possession of a return or onward ticket. Foreigners entering the Republic for longer periods must have sufficient funds or lodge a cash deposit equivalent to the cost of a ticket or must satisfy the Department that they have available means to depart. One of such options must apply. However, should the immigration officer consider it likely that the foreigner concerned will become a public charge, the financial guarantee contemplated in regulation 19(3) shall be required in an amount over and above the cost of a return air ticket. The IAB appears to be under the impression that deposits or repatriation guarantees may only be requested in the case of visitor's permits, i.e., in terms of section 11(1)(b) of the Act. However, in terms of sections 1(1)(xxxvii), 3(1)(c) and (k) and 10(5) of the Act, the Department may attach prescribed conditions, including conditions relating to the payment of deposits. Various deposits are prescribed in regulations 19(3), 19(6)(f), 20, 28(10)), 30(7) and 39(17), and also in Schedule A, item 1, column 6. The IAB suggests that the words "if applicable" not be used without an indication of when or how such thing or event is indeed applicable. For example, items 19 to 23 of Schedule A, require all the requirements under item 9(1), where applicable. The IAB states that most of these items are inapplicable to a work permit. However, the circumstances of the applicant will dictate what is applicable and what is not, which cannot be prescribed up-front. The application form set out in Annexure 14 indicates the specific documentation required for each individual type of permit, thereby eliminating the need for applicants to refer to Schedule A.

45.
IBN requested that I clarify whether a change of status contemplated in terms of item 9(3) of Schedule A includes a change from temporary residence status to permanent residence status. In terms of section 1(1)(xxxvii) of the Act, status means any temporary or permanent residence permit, and therefore an adjustment from temporary to permanent residency or from permanent to temporary residence is undoubtably a change of status for all purposes, including those of this provision. The IAB suggests that I should list a number of working activities not falling under the statutory definition of "work" which can be covered by a visitor's permit. The IAB specifically mentions models,

actors, professional photographers, cameramen, hairstylists, make-up artists, lighting, sound and special effects experts and other staff of production companies filming or shooting pictures in the Republic. I am not inclined to list any of such categories, because their specific mention would adversely affect those which are not mentioned. However, it is clear that such working activities when conducted in pursuance of a foreign contract or employment are not "work" as defined, do not require a work permit and may be accommodated with a visitor's permit. The Act and these Regulations make it clear, and this Endnote reinforces it.

46.
The IAB suggests that under the circumstances contemplated in this sub-regulation the relevant permit should not lapse *ope legis* but rather be liable to be withdrawn. I cannot carry this proposal as the relevant circumstances are beyond the realm of matters likely to be conveyed to the Department, which would make it difficult for the Department to react to the operative facts, thereby by default allowing foreigners to maintain a status to which they are no longer legally entitled. This provision is also consistent with section 26(b) of the Act relating to permanent residence where the consequences are more severe. It would be inconsistent for me to provide differently.

47.
The IAB suggests that these people be referred to as foreigners or illegal foreigners, but that would not be technically correct.

48.
Without further explanation, the IAB suggests that this provision is in contradiction with regulation 18(4). I do not see how this is the case.

49.
The IAB has recommended that some discretion be built in in respect of students coming from SADC countries. Obviously, from such countries the cost of a return ticket will be lower. The new system of migration control aims at simplifying procedures and providing certainty by narrowing discretion. I am not sure what it would mean to provide additional discretion in respect of SADC students. There is already discretion in this provision relating to whether the guarantees should be imposed at all in respect of a specific foreigner including students. Furthermore, the amount set out in this provision is determined as a ceiling. Similarly, the requirements set out in Annexure A, item 1:4 paragraph (e) in respect of visas would be a cash deposit applicable only in the case of applicants travelling by air.

50.
The IAB suggests that the "dignitaries of a foreign state" referred to in section 12 (1)(e) of the Act should include foreigners who do not work for a foreign government. However, peculiarly, the IAB's suggestion points out that this may not be consistent with the Act. Indeed, such suggestion would provide diplomatic permits to the so-called very important persons. However, this collides with international practice as well as with the clear provisions of the Act which refer to dignitaries of a "foreign state" as opposed to a "foreign country", thereby requiring that the foreigners in question be part of the government of a foreign country. Moreover, issuing a diplomatic permit to a VIP is incongruous from the point of view of general principles of migration control as well as consistency with international practice and agreements.

51.
The IAB suggests that I provide qualifications of some type to ensure that the power to give or refuse accreditation is not open to abuse. However, the power to give or refuse accreditation is internationally and historically a highly discretionary power and it may be within the absolute discretion of the Republic to accept or refuse any given person as a representative of a foreign state. Usually matters of this nature are handled on the basis of both reciprocity and national interest within a balance of interests which lies within the prerogative of the Department of Foreign Affairs, the discretion of which would not be appropriate for me to circumscribe by means of these Regulations.

52.
GHS requested that, in the case of students, these Regulations extend the validity of a visitor's permit irrespective of the length of the study of period and up to six months. However, it is clear from section 13(1) that a study period for longer than three months requires a study permit. It is possible that the visitor's permit may be renewed for an additional study period of up to three months provided that, in fact, each study period is separate and distinct and it does not emerge that the original intention of the applicant was indeed that of studying for longer than three months. INT questions why this regulation does not allow a student to work during the holiday, when in fact such regulation does do so. However, one could not have a blanket authorisation because the Department would not necessarily know that a student is in fact on holiday and does not have studies to perform which prevents him or her from engaging in full time work. PWC argues that a study permit should cover many schools enabling the bearer to change schools. However, this proposal is neither permissible in terms of the Act nor desirable from a policy viewpoint as it would dilute the capacity of the Department to monitor compliance with permit conditions. Moreover, it is the intention of the Act to shift some of the burdens of monitoring compliance with permit conditions onto the institutions of learning, and it is therefore important that when a foreigner registers in a new school, the relevant permitted activities are undertaken with the awareness and involvement of that school. Moreover, future policies of the Department of Education may limit the number of foreigners who qualify for admission in certain schools.

53.
This provision may have a variety of applications over and above providing specifically for the case of a foreign government providing guarantee for the cost of repatriation of its nationals studying in the Republic.

54.
The IAB suggested that also in respect of "other institutions of learning" a permit may be issued for an open-ended period, but qualify such suggestion referring it only to"bona fide" institutions of learning. An institution of learning is a business and for as long as it conducts its business in accordance with any applicable law and regulation it will be regarded as such in point of migration control, without giving me the power or the latitude to distinguish between good faith or bad faith, or reliable or unreliable institutions of learning, for purposes of permit length. We also have practical experience of many students who drop out of institutions of learning which fails to notify the Department of such an occurrence.

55.
IBN raised the need to clarify the relationship between internships and practical training, explaining the different statutory and regulatory requirements applying thereto. I do not see the need for textual clarification as the matter is clear. Practical training only follows from a period of study and must be functionally related to such study, as it would be the case for the practical training of somebody who studied law, medicine or automotive mechanics. In this case there is no need to comply with the advertisement requirements of a general work permit or with a quota and training fee of a quota work permit, for in respect of practical training the "needs test" is not applicable as the work opportunity is tailored to the education of the applicant and his or her benefit. Practical training will be remunerated. For this reason practical training does not apply in a situation in which foreigners studied abroad and intend to work in South Africa to acquire the practical experience here for their foreign studies. This latter situation is often referred to as internships. As far as migration control is concerned there are two types of internships: those which are remunerated and those which are not. Remunerated internship must comply with the requirements applicable to work permits, including the fact that such remuneration must comply with industry standards and other legal requirements, while non-remunerated internship may be accommodated in terms of a visitor's permit either in terms of 11(1)(b)(i) of the Act if the internship is shorter than three months or in terms of section 11(1)(b)(ii)(dd) of the Act if it is longer than three months, or in terms of 11(1)(b)(ii)(dd) of the Act for other cases and situations. The IAB related a recommendation of the educational sector suggesting that the registrar of a university or technikon be the sole one with the prerogative of authorising foreign students to work. Effectively, that is what this provision provides for. However, both in law and policy I could not authorise a registrar to issue work permits. Therefore, the consent given by the registrar is the sole basis on which the Department ought to issue the authorisation to work contemplated in section 13 (3) of the Act, subject to the Act and to these Regulations. The IAB also related a recommendation from the same source about leave replacements in higher education institutions, requesting that they be accommodated under visitor's permits "in light of tax implications". Foreigners

in South Africa on leave replacements are paid abroad and are often working in the Republic in terms of an employment relationship structured abroad, and, therefore, they qualify for a section 11(1)(b)(ii)(aa) permit relating to academic sabbaticals. However, if they are in an employment relationship in the Republic and they are paid in the Republic they will need to have a work permit. Under the Act, I have no further discretion in disposing of this matter. Another concern expressed by the IAB expressed from the same source suggests that Annexure 14 may be confusing for foreign students in the higher education sector and that, therefore, for such students a special application form ought to be designed. I fail to understand what would be confusing in Annexure 14 as such students only need to fill in the portion relating to student permits and why such Annexure would be particularly confusing for university and technikon students and not for the rest of our applicants who might not necessarily have the same degree of advanced education or mastery of one of the Republic's official languages used in the higher education sector.

56.
The IAB forwarded a recommend from the educational sector that only section 13(1)(a) of the Act should apply in respect of permits issued under section 13(1)(a) of the Act, feeling that there is a contradiction in that this Regulation and paragraph 12.2.1 and 12.2.4 of Annexure 14 impose requirements for a section 13(1)(a) permit which are similar to those which apply in respect of section 13(1)(b) of the Act. I fail to understand what the problem is. Section 13(1)(a) of the Act requires me to craft the permit requirements, and in so doing I find it appropriate to model section 13(1)(a) permits as close as possible to section 13(1)(b) permits. The difference between the two types of permit should not lie in permit requirements which, in fact, ought to be the same. The level of monitoring on the students and the threshold requirements should not change. The difference between the two permits is that 13(1)(b) enables the work to be performed by the registrars of the qualifying institutions of learning, thereby facilitating and expediting the process, leaving it to the Department merely to endorse the activity conducted by such registrar without having to process the relevant application. Conversely, section 13(1)(a) permits require processing by the Department who will need to exercise due diligence in making the type of verification of authenticity in respect of which in a section 13(1)(b) environment, the Department would rely on the registrars.

57.
The IAB suggests that I clarify the circumstances in which a treaty permit may be utilised. The purpose of a treaty permit is that of designing permit conditions tailored to the requirements and purpose of a treaty which can be easily achieved by making reference to the relevant treaty rather than attaching such conditions to a work, study, business or other permit. Moreover, the grounds which entitle a foreigner to a treaty permit will be set out in the relevant treaty, thereby making the ordinary grounds for a business, work, study or other permit irrelevant. The same applies in respect of length of stay. All aspects of the "needs test" are satisfied by the existence of a treaty. The only question is whether the relevant treaty does in fact contemplate the foreigners applying for the permit and intends for them to be in the Republic for an identified purpose or activity. For example, if an agreement is entered between the Government of the Republic and a foreign state for foreign doctors to come and work in our country, such doctors may be issued with a treaty permit enabling them to conduct work. Automatically such permit will embody any conditions set out in the treaty, such as the one enabling the foreign state to recall such doctors at will, or other conditions. Moreover, an international agreement could be related to a group or class of foreigners to be trained or educated in the Republic, in which case the treaty permit will enable them to study or conduct research. Furthermore a treaty permit will be available to foreigners who are part of organizations or institutions established under a treaty but not eligible for a diplomatic permit. These examples are by no means exhaustive. In all cases, the reference to the treaty will create a shortcut, requiring the relevant foreigners not to comply with requirements set out for work, business or student permits. It is not necessary for the relevant foreigners to work for the organ of State which is responsible for the administration of the treaty. The key element is that the relevant treaty should be the enabling instrument providing for the relevant foreigners identified in terms of the treaty, or through a process set out thereunder, to come to the Republic. In this respect, treaty permits are not appropriate for miners who come to South Africa in terms of agreements with neighbouring countries or countries of our region which call for the deferred full or partial payment of such miners' wages back to such miner's foreign addresses or families. Historically and practically, this matter has been handled differently, which fact has been registered in the Act, which has made provision for miners to be accommodated in terms of a corporate permit albeit some incidents of their work in South Africa fall within the scope of application of international agreements. In fact, international

agreements are bound to cover many aspects of foreigners working in South Africa, as they cover many aspects of social and economic life. At this juncture, the nature and features of the agreements referring to miners are not sufficiently specific and are not of such a type which would justify the Department issuing treaty permits rather than corporate permits to accommodate foreign miners working in the Republic. Finally, the word "treaty" has the international law meaning, as one of the two sources of international law, as opposed to customs. Therefore, it includes any international instrument creative of international treaty law, such as agreements, conventions, protocols, binding declarations and *strictu sensu* treaties.

58.
HGA argues that matters covered in this regulation as well as regulations 28 and 30 ought to be handled by the Department of Trade and Industry [DTI] with its own dedicated infrastructure. However such a suggestion is not consistent with the Act which gives the DTI a consultative rather than an executive role, and would not be practical as the execution of immigration control functions requires massive dedicated capacity as well as a continuum on the line of permit issuance, monitoring, enforcement and possible corrective action such as deportation. Incidentally, but significantly, I wish to clarify that an investor permit is not necessary to make an investment in the Republic. Foreigners may invest in the Republic while on a visitor's permit or any other permit, or from abroad. However, a qualifying investment entitles the investor to a section 15 permit if he or she wishes to obtain one.

59.
Comments were received in respect of my notice to make draft regulations, which are echoed by INT, indicating that in respect of certain business the financial threshold set out in the Immigration Regulations made in terms of section 52 of the Act was too high or not applicable. This concern was coupled with the concern that the waiver process aimed at assessing viability through Trade and Investment South Africa is discretional. Therefore, this new provision now gives the applicant the option to use an alternative avenue to secure the waiver, thereby ensuring that any viable business is accommodated. INT also seems to question my power to issue this regulation which in fact is called for by the Act. The IAB suggests that the threshold should be reduced to R1 000 000, motivating its suggestion on the need to avoid the erroneous "perception" that South Africa intends to accept only "multi millionaire businessmen or retirees" . This provision calling for a R2 000 000 minimum investment creates a shortcut which avoids the business or investment from being assessed on its merits or viability. Regulation 24(2)(h) and the provisions for waiver requirements provide a comfortable venue for any investment below this threshold. Therefore, I am comfortable that I should deal with matters on the basis of reality, not perception, and that as it stands this regulation in all its facets caters for any viable business. The IAB also seems to believe that the contribution is a cash one, when in fact it includes any tangible or intangible value, which is part of the business' book value. The IAB also makes reference to an informal document "published by SAICA and circulated by the Department" which, reportedly, sets out additional requirements, such as the requirement to obtain "written confirmation from the Department of Labour regarding the appropriate salary for a category of employment". Such requirements violate these Regulations and reverses the process as set out in the Act, unduly and illegitimately inhibiting the processing of applications. Such document has no legitimacy and should be disregarded, as the IAB correctly suggests. I praise the IAB for monitoring this and other aspects of the implementation of the Act to ensure that the intended system of migration control, as defined by the Act and these Regulations, does not get twisted and undermined by administrative practices which do not comply with their letter and spirit.

60.
BSA argues that the R2.5 million threshold is too high and should be lowered to R500 000-00 with scope for discretion where there is proven entrepreneurial ability. Government processes are not suitable to determine in an objective manner entrepreneurial ability especially when relating to activities in foreign and distant countries. For this reason regulation 24(8) allows many organs of State to have the discretion to request the reduction of the capitalization requirement. In exercising their discretion they may take into account entrepreneurial ability however that may be averred by the applicant. The newly introduced sub-regulation (2)(h) provides an additional element of flexibility which eliminates the capitalization requirement when in the opinion of the chartered accountant the relevant business is sufficiently well funded, which may be below the R500 000-00 threshold suggested by BSA. The capitalization requirement may include intangibles and is not limited to cash and equipment. Therefore, I believe that there is sufficient flexibility to accommodate in one way or the other any business venture which has the potential to contribute towards economic growth in the Republic. IRU express their concern about seed

businesses which are seed operations set in place to test the market by one or two foreigners prior to the actual setting up of a business, which may involve operating out of temporary premises and placing certain import or export orders or conducting other activities without intended permanency. Provided such activities are indeed preliminary and not intended to continue as such for more than three months, such activities ought to be regarded as business activities which qualify for a visitor's permit.

61.
E&A argues the need to amend this sub-regulation because of the alleged impossibility of certifying compliance with sub-regulation (2)(a) when the applicant needs to resort to the recommendation referred to in sub-regulation (8). However, such is not the case as the recommendation contemplated in sub-regulation (8) needs to be acquired before the certificate envisaged in section 15(1)(c) of the Act, as such certificate is to make reference to such recommendation as a way of complying with sub-regulation (2)(a). IBN requires a clarification on whether this is the only substantive requirement for renewal of this permit. This is correct provided that all other provisions of law and regulations and information requested in the renewal form are complied with. These considerations will apply also in respect of renewal of permits issued under the Aliens Control Act.

62.
Also in respect of this sub-regulation, the IAB suggests that the automatic lapsing should be substituted with the power of the Department to withdraw the permit, once the operative facts come into existence. However, as I indicated in another Endnote on the same subject matter, this is neither in compliance with the letter and the spirit of the Act, nor is it practical, as the Department would not have the capacity to follow up on each outstanding permit to verify the continuous existence of the permit's grounds and conditions. The letter and the spirit of the Act intends to shift the burden of ensuring compliance with statutory and regulatory requirements onto the applicant, who, before the expiry of a permit or the deadline for the fulfillment of a condition, must ensure that the permit still lies on the grounds on which it was granted.

63.
The IAB suggests that this paragraph be deleted because "no operating business necessarily maintains its initial capitalization". However, the capitalization contemplated in this case is that of book value, not cash-flow, as the IAB suggests. This provision is important to avoid the fraudulent practice, which has been experienced for many years in the past, of foreigners making contributions towards the establishment of a business which are then withdrawn as soon as the relevant permit is obtained. It must also be stressed that this is not an automatic lapsing, and therefore the Department will be able to assess the specific circumstances of the case. Moreover, the Department is under no obligation to withdraw a permit if there is a failure to maintain the required capitalization, but it may do so when it is satisfied that the grounds on which the permit was issued no longer subsist in a manner which is serious and material, which obviously will not be the case in a situation of short-term or cyclical negative cash-flow.

64.
E&A requires a clarification on how the Department goes about obtaining the recommendation referred to in this sub-regulation and whether the Department is bound in such procedure by the deadline set out in Regulation 2(10). In fact, it is not the Department but the applicant who needs to apply for and secure such recommendation which will become part of the documentation supporting and required for the permit application. The deadline contemplated in Regulation 2(10) only runs from when the application is so completed.

65.
Also in this respect, CKA argues that an immigration practitioner should be able to provide relevant certification on behalf of his or her client. However, in addition to the considerations I noted in the Endnote to Regulation 11 (2)(a), the proposal is barred by the provisions of the Act. CKA also suggests that instead of a fixed threshold one leaves it to a certifying authority to determine whether under the specific circumstances of any given family, sufficient financial resources are available to that family to sustain the relevant foreigner. At this initial juncture in the development of a new system of migration control, such a proposal would introduce excessive fluidity and uncertainty and may be open both to abuses as well as conflicts between the views of the Department and those of a certifying authority. However, it is a proposal which could be considered in further stages of regulation making.

66.
The IAB suggests that I should immediately provide for a flexible system which would allow the amount required to qualify for this permit to be determined on a case by case basis, but fails to give any guidance on how such a complex system can be developed. Therefore, the matter needs to be left in abeyance until there is clarity on how a matter of this nature could be dealt with from a practical and objective administrative viewpoint. In fact, it must also be considered that a discretionary case-by-case approach may be open to abuse and result in confusion.

67.
See the Endnote to sub-regulation 19(5). The IAB also in this respect suggests that the permit should be capable of being withdrawn rather than *ipso facto* lapsing. However, in addition to the comments I made in previous Endnotes in respect of similar suggestions on the side of the IAB, I must stress that it is the responsibility of an applicant to ensure that the grounds on which a permit is granted subsist, and that it is the spirit of the Act to minimize the work which the Department must conduct to monitor compliance with permit conditions and requirements. If the burden were on the Department to withdraw a permit under certain circumstances, the Department would need to deploy more capacity to monitor compliance with such circumstances. Without such monitoring, for which the Department has presently insufficient capacity, the requirements themselves may become meaningless.

68.
CON expresses their concern that employers may terminate work permits by not complying with their requirements. However, much of such a concern relates to the Act rather than its regulations. Immigration law cannot concern itself with the validity of the termination of an underlying employment relationship which, if in contravention of applicable contractual provisions or labour laws, may give rise to actions against the employers. An employer has the power to terminate an employment relationship even when he or she might not have the right to do so, which may give rise to civil liability. Immigration law operates on the basis of an employment relationship which is to be established and for as long as it persists, and does not concern itself with the circumstances and events which may enable such relationship to persist or cause its termination. Similarly, except in blatant cases when the intended employment is self manifestly illegal, immigration law cannot concern itself with whether the relevant business is in compliance with other laws and is operating legally, or is in a field of activities which are legal. It will be the responsibility of other organs of State to make such determination, closing down the business concern or terminating the relevant employment positions, if necessary. INT raises a number of questions in respect of this regulation, which, as questions rather than comments, do not need to be answered within this exercise and are in fact answered by the language of the regulation itself without need for textual amendments or clarifications in Endnotes. In fact, in response to INT, it is clear from the text of these Regulations that spouses and certain dependents of work permit holders qualify for visitor's permits, while a broader range of family members may directly be accommodated under an exceptional work permit which is directly extended to them on account of the policy which intends to facilitate the relocation in the Republic of foreigners with exceptional skills and qualifications. It is equally clear that INT's questions relating to change of status are answered in these Regulations which allow any change of status within the Republic, including from intra-company transfer or other temporary residence permit to permanent residence on any of its grounds. Similarly, it is obvious that in order to apply for a work permit one needs a prospective employer and, therefore, the situation of a foreigner seeking employment falls within the scope of a visitor's permit provided that seeking employment is no longer than three months, as seeking employment is not work within the Act's definition. Finally INT asks how the Departments of Labour or Trade and Industry may evaluate individual skills levels, when, in fact, no provision in the Act or these Regulations requires them to conduct any such evaluation. The Department of Labour needs to determine the minimum level of remuneration of a certain job position, and in so doing it may take into account the minimum level of skills required for such a position, which the individual concerned may very well exceed, for the concern of the Act and its Regulation is merely to ensure that foreigners are not employed at lower conditions than those offered to our nationals, which would undermine labour standards and market conditions.

69.
In terms of regulation 18(10) the training fee also does not apply in respect of spouses of residents or citizens.

70.
As PAG correctly comments, the taxable remuneration is the same amount which forms the basis of remuneration for the purposes of the Unemployment Insurance Act and the Skills Development Levies Act, which is the definition of remuneration employed in the fourth schedule of the Income Tax Act. The intention is that of enabling employers to utilise the same basis for purposes of payroll, contributions and deductions. PAG is also correct in commenting that the training fee is to be paid by the employer only and may not be deducted from the foreign employee's remuneration. It is recorded that in terms of regulation 28(3) of the Regulations, which I made in terms of section 52 of the Act, I issued the following notice relating to the collection of the training fee which has been renewed in terms of regulation 48(1) with the amendment set out in regulation 48(1)(a) and recorded hereinafter:

"Collection of Training Fees

In terms of sections 2(1)(k) and 2(2)(g) of the Immigration Act, 2002 (Act No.13 of 2002) read with Regulations 28(3) and 30(8)(b) of the Immigration Regulations, the Minister of Home Affairs has determined that training fees amounting to two percent (2%) of a foreign employee's taxable remuneration payable by employers of foreigners on quota work permits and/or in terms of corporate permits, shall be collected in the following manner:

1. Employers shall deposit the fee quarterly [~~in advance~~] in arrears into the designated Standard Bank of South Africa current account number 0111135905, Van Der Wait Street, Pretoria Branch Number 010145. Cheques deposited must be made out in the name of the Department of Home Affairs.
2. ~~The training fee in respect of an initial temporary residence permit shall become payable by the employer upon notification by the Department that the relevant permit has been approved in principle. The permit shall only be issued on receipt of a deposit slip indicating that the fee has been paid into the abovementioned account.~~ The training fee in respect of a relevant temporary residence permit shall become due by the employer upon notification by the Department that the relevant permit has been approved and the commencement of the relevant employment, and shall be payable in arrears as set out in the Immigration Regulations. The employer shall be responsible to deliver to the Department the deposit slip indicating that the fee has been paid into the abovementioned account.
3. The following particulars must be inserted on the deposit slip in the space allocated for the "Depositor's reference details/Bag seal number"
   i. The depositor's (employer's) name; and
   ii. The name of the employee in respect of whom the training fee was paid.

   The deposit slip together with a separate sheet (if necessary) containing any further pertinent information that may be necessary to identify the applicant in respect of whom the training fee was paid shall be, transmitted by facsimile, by mail or by hand to the permit issuing mission/office.
4. The deposit date of the initial fee shall be deemed to be the date of ~~commencement~~ the end of the first quarter. Subsequent quarterly fees payable in respect of the relevant employee shall be paid on or before the third day of the ensuing quarter. The deposit slip indicating payment of subsequent quarterly fees shall be transmitted to the regional office of the region in which the employee is employed. Such deposit slip must be accompanied by a separate sheet containing the employee's full names and surname, date of birth, temporary residence permit number, passport number, taxable salary and, if available, the Department of Home Affairs' case file reference number.
5. ~~Should the employee leave the services of the employer before expiry of the quarter for which the training fee was paid, such fee or pro rata thereof shall not be refundable.~~

71.
ACA and BSA objected to the training fee itself, rather than its actual amount. This fee is utilized as a market forces based "needs test", showing that, by being marginally more expensive than an available national, the foreigner is somehow needed. BSA and ACA did not suggest how such "needs test" ought to be otherwise satisfied in respect of any application or as an aggregate. I am not satisfied that there are research and administrative tools in place, able to determine how many foreign workers are needed in each of an innumerable number of industry types, subtypes, job positions and job classifications, in respect of each of the potential regions which would circumscribe a localized labour market or sub-market. Only tools of this nature would enable us to substitute the "needs test"

in respect of each application with an aggregate needs test, which would still require assessing the actual need in respect of any given job offer and renew such test over time to test the persistence of such need. In fact, in other countries, quota systems are combined with labour certifications similar to our section 19(2) work permits, or with "point systems" to determine actual need in spite of the quotas. Moreover, the training fees test is necessary throughout the employment relationship and not only at its inception. Therefore I do not share BSA's assertion that the fee is futile and not viable. It is entrenched policy that work permits are to be issued to foreigners when they are somehow "needed" [Preamble at (h) and (i) and section 2(1)(j)(i)(aa) of the Act]. It is also entrenched policy that a connection ought to exist between foreigners working in South Africa and the training of our nationals [Preamble (j) of the Act]. CON, ACA, PWC and BSA hold that the training fee was deleted by Parliament from the Bill as introduced and ought not to have been reintroduced. However, the training fee is expressly contemplated in sections 1(1)(xl), 2(1)(j)(ii), 2(2)(a) and 2(2)(g)(i) of the Act. Moreover, the notion of a quota system was introduced in the Portfolio Committee at the last stage of its deliberations and was then criticized by its own promoters during and immediately after its approval by the National Assembly. The NCOP could not complete its deliberations on the matter, and requested me to amend the Bill to eliminate the quota system. In the parliamentary debate on the Bill, I announced that I would do so only if my analysis of the Act would reveal that the same end could not be achieved by means of regulations. The need of giving implementation to sections 1(1)(xl), 2(1)(j)(ii), 2(2)(a) and 2(2)(g)(i) of the Act indicates that amendments to the Act are not necessary. ACA and BSA fear that the training fee may increase the cost of labour and make South Africa less competitive, without producing any factual or analytical basis for such statement. One of the major costs in acquiring foreign labour is the cost, time and uncertainty of a labour certification of the type contemplated in respect of section 19(2) work permits. Section 19(1) quota permits are immediately available in a simplified manner in the spirit of item (a) of the Preamble of the Act. If under any circumstances quota permits do not meet an employer's needs, section 19(2) permits are available where there is no training fee and the "needs test" is satisfied by a labour certification. Intra-company transfer and exceptional skills permits, which carry no training fee, and corporate permits, in respect of which the training fee may be waived or reduced, are also available. Because of this plurality of available work permits, I do not believe that the training fee will deter the employment of needed foreigners and reduce the pool of needed foreign skills as BSA and ACA suggest. ACA misread the draft Regulations, as the training fee is a "needs test" not a means to gain exemption from advertising requirements, as the latter are part of a labour certification process which is an alternative "needs test" justifying the employment of foreigners. Both tests are available to an applicant. BSA argues that the training fee does have a training purpose because it is deposited in the National Revenue Fund [NRF]; however the reason for section 2(2)(g)(i) of the Act is to enable the Department to define the training fund and recommend it when Parliament authorizes the appropriation of the NRF. BSA's argument that the training fee is discriminatory on an ethnic basis is incomprehensible. CON is in error in suggesting that the Department would run programmes utilizing the training fund which would interfere with the training in terms of the Skills Development Act and related legislation, when in fact the training fund, which is a mechanism to report to Parliament, has merely the function of recommending to Parliament and the decision-makers within the budgetary process, that the funding of such legislation be increased by the measure of the training fund. PWC argues that a quota system or a quota permit should refer only to specific categories which are identified by the Department of Labour as being in shortage. Setting aside that there is no reliable mechanism to make such a determination, the fact is that a quota system does not need to have such a feature and usually does not, as is the case, for instance, for the quota system of the United States. The IAB forwarded a recommendation from the education sector that higher education institutions be exempted from the training fee on account of their being "training institutions". I fear that the motivation for this recommendation fails to appreciate the purpose of the training fee, which purpose does not change in respect of training institutions. The foreigners who are employed in higher education institutions are working there and, technically, are filling positions which could be filled by South Africans. Therefore, also in their respect the need arises to demonstrate that they are "needed". The argument could be made that the threshold of "need" in respect of people working in institutions of higher education should be lower because they bring into the country large amounts of so-called "human capital". This sub-regulation provides for the future possibility of a differentiation of the amount of the training fee depending on categories. It might be the case that in such context the training fee may be reduced in respect of foreigners working at institutions of higher education in a teaching capacity and increased in respect of categories of workers where there is a lesser need for foreigners. I invite the IAB to conduct scientific and analytical research on how one could determine such differentiation of need. At present there are no scientific bases for such a differentiation over and above scant outdated and often anecdotical information. In addition to identifying the scientific and social bases for a

differentiation of a training fee, the IAB should advise me on how one can define clear categories delineating them by means of objective criteria which can easily be enforced by the Department without the need of actual verification of qualifications and their necessary connection with the job position and the relevant category, which exercise would be cumbersome in terms of administrative capacity and time. The IAB echoes some of the concerns expressed by certain public comments about the training fee, but indicates no alternative to determine the "needs test", suggesting that the entire quota system which, for better or worse, is provided for in the Act, ought to be scrapped. Going back to the legislative history of the Act, the IAB points out that the training fee was contemplated before the Bill was amended to introduce provision for a quota system, and therefore one may not have to have one together with the other. However, both the quota system and the training fee are in the Act. As I indicated, I am satisfied that the intention of Parliament, as it objectively emerges from the Act, was not that of excluding a training fee in respect of the quota system, for the training fee is provided for in the Act. Given its purpose as defined in the legislative history of the Bill, the training fee could only apply in respect of a work permit issued under the quota system, rather than one issued in respect of section 19(2) of the Act.

72.
It is recorded that in terms of regulation 28(3) of the Regulations which I made in terms of section 52 of the Act, I issued the following public notice relating to quotas, which, in terms of regulation 48(1)(b), shall apply in respect of these Regulations as per the date of their commencement.

> "In terms of section 19(1) of the Immigration Act 2002 (Act no. 13 of 2002) and regulation 28(4)(g) of the Immigration Regulations, the Minister of Home Affairs has determined the following categories as the categories contemplated in section 19(1) of such Act and the quota of each of such categories as the quota contemplated in section 19(1) of such Act, provided that a foreigner may apply in respect of a lower category for which he or she qualifies when the higher one is exhausted.

CATEGORY	QUOTA
Employment opportunities in respect of which the relevant employer justifiably requires a post-graduate degree and at least 5 years of professional experience	90 000
Employment opportunities in respect of which the relevant employer justifiably requires a graduate degree and at least 5 years of professional experience	75 000
Employment opportunities in respect of which the relevant employer justifiably requires a graduate degree and at least 2 years of professional experience	70 000
Employment opportunities in respect of which the relevant employer justifiably requires a degree and at least 5 years of professional experience	70 000
Employment opportunities in respect of which the relevant employer justifiably requires a degree and at least 2 years of relevant experience	70 000
Employment opportunities in respect of which the relevant employer justifiably requires a certificate and at least 5 years of relevant experience	70 000
Employment opportunities in respect of which the relevant employer justifiably requires a certificate and at least 5 years of experience showing entrepreneurship, craftsmanship or management skills	70 000
Employment opportunities in respect of which the relevant employer justifiably requires at least 5 years of experience showing entrepreneurship, craftsmanship or management skills	75 000
Employment opportunities in respect of which the relevant employer justifiably requires at least 5 years of experience showing skills acquired through training	90 000
Employment opportunities in respect of which the relevant employer justifiably requires experience showing skills acquired through training	60 000

73.
IRU criticizes the use of chartered accountants arguing that they are not labour specialists. However, this is a function contemplated in the Act. Moreover, chartered accountants are not required to be labour specialists, and what is contemplated in this provision and in the analogous one in the Act does not require specialisation in labour matters. If necessary, in the performance of their function chartered accountants may require inputs from experts in the field, but by and large their task is that of evaluating the information before them. In so doing they perform a function which would be exercised by officials of the Department who are also not labour specialists.

74.
PWC mentions difficulty for a chartered accountant to certify matters as contemplated in these Regulations, but does not specify such matters and difficulties beyond the case of the certification "that the employer will employ the foreign national in the position". PWC misread this item, as what is required is "certifying that the position exists and is intended to be filled by such foreigner". It is not about what will happen in the future, but the present status of a vacancy assessed in good faith on the basis of rational business requirements, which make it reasonable for the employer to have the present intention to employ the foreigner concerned in such a position. It is a professional good faith test rather that a factual test not to be assessed exclusively against future developments. Believing that this explanation suffices to address the issue raised, I see no need to change this item as set out in the draft regulations.

75.
Seemingly in respect of this provision or possibly in respect of this entire regulation or even in general, INT raises the question of wether an applicant, personally or through his or her immigration practitioner or attorney, may contact directly the Department of Labour. It is the responsibility of an applicant to ensure that all certifications or documentation required to support his or her application are provided, and only when all such certifications or documentation are provided will an application be complete. Therefore, the applicant must obtain any relevant documentation from other departments, including the Departments of Labour or Trade and Industry, and it will not be the responsibility of my Department to do so on the applicant's behalf, except in those cases in which the Act or these Regulations require my Department to act in conjunction or after consultation with other departments, in which case my Department may undertake such processes; which, however, does not bar the applicant from approaching such departments directly and obtaining from any of them documentation which may satisfy the consultative requirement, so as to accelerate or shortcut the process. The IAB, peculiarly, does not suggest but merely "notes sympathetically" the requests from the education sector for exemptions from a waiver of the training fee, suggesting that the Department of Education be included in Regulation 28(4)(d)(i). However, within the schema of the Act, the juxtaposition of interest in this field is played out on the balance between the Department of Labour and that of Trade and Industry, or between organized business or organized labour. I am not inclined to multiply representation of interests in the process. Migration control affects the whole of society and therefore potentially all the departments and other organs of State may legitimately require to be represented. There are no sufficient basis to believe that foreigners within one sector of society may be more important than others, as, for instance, those working in the mining industry could justify the involvement of the Department of Energy and Mineral Resources.

76.
E&A questions whether evaluation contemplated in this paragraph is sufficiently well defined in terms of objective parameters and criteria to meet the constitutional requirements circumscribing discretion. I am convinced that such is the case, as the evaluation contemplated in this paragraph is the same as that undertaken by the Department in respect of a section 19(2) general work permit and, therefore, the parameters and criteria applicable in respect of such type of work permits shall apply also in this case *mutatis mutandis* .

77.
PWC requests clarity on whether the training fee applies in respect of extraordinary quota permits. I do not feel that an amendment is necessary to provide further clarity, as it is obvious that such a requirement does not exist as the sub-regulation does not call for it. In fact, in respect of this kind of permit the "needs test" is satisfied by government's assessment of what is needed and of the measure of such need. In this case government reacts to an identified need which ought to be able to be measured in respect of geographical areas and labour markets

and ought to be clearly identified in respect of the specific category of workers in respect of which this extraordinary permit might be used.

78.
E&A requested an amendment to make provision to publicise from time to time how many permits have been issued and how much of the quota is still available. This matter will be dealt with administratively. CON argues that this provision should have been contained in the Act and because it was not provided for in the Act exceeds the enabling provision. However, consideration must be given to the fact that section 19(1) calls for a system of issuance of work permits based on quotas without identifying the features for such a quota system, leaving the entire development of such a quota system to regulations. In other countries quota systems are spelt out in very lengthy provisions of law and even longer sets of regulations. Provisions relating to the unutilised portion of an annual quota are typical of, and appropriate to that which defines a quota system. CON argues that before a determination can be made that the unutilised portions of an annual quota is to be carried into the following year, one would need to understand the reasons for under-utilisation. However, such an analysis affects and can be taken into account when the Minister determines the quota for the following year in terms of section 19(1) of the Act.

79.
The IAB suggests that different permit requirements be devised to accommodate actors, models, graphic designers, software development specialists, photographers and "many other categories which do not involve fixed full-time employment". I share this policy view, but I do not think it necessary to modify the text of these Regulations, because the definition of "work" in the Act is clear, and I am confident that the Act, read with these Regulations, provides sufficient flexibility for this admittedly important class of foreigners to be accommodated within the Republic mostly on the basis of a visitor's rather than a work permit. However, the IAB suggests that it will conduct research in this field, which it is welcome to do.

80.
BSA incorrectly read this sub-regulation and section 19(2) of the Act. It is not correct that general work permits are available only when the quotas of section 19(1) permits have been exhausted. Both permits are available and an applicant may choose the type of permit he or she may wish to apply for. Upon exhaustion of the relevant quota, section 19(1) permits will not be available, but all other type of work permits are not limited in number but only in respect of their requirements and are available to anyone who qualifies for them in terms of the Act and its Regulations. In regulation 13 it is expressly stated that work permits issued in terms of the corporate permit do not fall within the quota contemplated in section 19(1)(i) of the Act, as one may have inferred the opposite as both quota and corporate permits employ the training fee as part of their respective "needs test". However, it is obvious that section 19(2) general work permits do not fall within the quota limits as they carry their own "needs test" and are issued over and above any quota, consistently with this statutory schema which makes them a separate category of permits from those contemplated in section 19(1). Also because section 19(2) permits in terms of the Act are not part of the quota permit, it became necessary to devise a separate "needs test" within quota permits and to implement the statutory provisions relating to training fees.

81.
PWC objected to the requirement of national media arguing that the job markets are more localised. While I concede that often prospective employees are primarily drawn from within the immediate employment area, under present circumstances of vast unemployment job seekers are also willing to relocate across the country and therefore, for purposes of this provision, which intends to protect nationals ready, willing, and able to take up the offered position, I must regard the whole of the country as the relevant job market. INT requires that I define national print media further, which I think unnecessary as the words employed sufficiently suggest that it must be a publication intended to be available throughout all main centres in the Republic, even though not necessarily everywhere in the Republic. I have added the word "relevant", not to limit what can be used in terms of this provision but to allow publication in specialised magazines and other print media in which it may be customary to advertise certain specialized job opportunities.

82.
ACA states that the requirements for advertisement set out in this paragraph could not be dealt with by regulations and ought to be left to the employers' discretion. However, our experience shows that it is important to define what is required to ensure a sufficient level of advertising. The policy is that of ensuring that the position of a foreigner is advertised more prominently than one would with a national, so as to ensure that at parity of conditions the national has a better chance to be employed. PWC suggests that the requirement for advertisement could be obviated by the use of an employment agency or job search company. However, such techniques would place the Department in the untenable position of having to assist the efforts made by such entities, and determine whether they are credible and capable. This would be against the spirit set out in paragraph (a) of the Preamble of the Act.

83.
PWC suggests that the remuneration should not be advertised to preserve confidentiality and avoid other employers' poaching. However, the remuneration is the most characterising aspect of a job offer and is therefore essential. The IAB also suggests that the remuneration should not be part of the advertisement because it is confidential and may be used by competitors for various purposes, including "poaching" employees. However, remuneration is the essential element of a job offer and its non-disclosure would make the labour certification less meaningful. The disclosure of remuneration is also international practice in respect of labour certifications. However, I must stress that this requirement will be satisfied if the remuneration is merely indicated within a reasonable range between a minimum and a maximum salary or remuneration package, to be negotiated or adjusted to the applicant's specific skills or qualifications, rather than by means of a specific figure.

84.
The size of the advertisement has been reduced to respond to public comments. However INT seems to question my power to prescribe a minimum size. I believe this provision to be an appropriate feature of regulating what needs to be done in terms of section 19(2) of the Act and to avoid perfunctory advertisement which eludes the purposes of the Act.

85.
The IAB echoes certain public objections to the utilization of national newspapers for advertisement purposes, pointing out that job markets are mainly localized. It proceeds to state that many prospective employees do not read national newspapers. In the absence of corroboration, I do not believe it to be correct that many employees do not read national newspapers as opposed to regional ones, for the Department's experience suggests otherwise. The IAB suggests that "large provincial newspapers" would qualify as well. However, that would place the Department in the invidious position of having to define what a "large" provincial newspaper is, which may become arbitrary. The IAB expressed a concern that the requirement to advertise for four weeks may place on the applicant burdens which are not necessary because "job seekers watch the papers very carefully". However, such length of advertisement is also meant to satisfy the "needs test" over a period of time, to avoid that a foreigner is employed when a national is not available to take up the relevant position only in respect of a very short time period. Nonetheless, I have reduced such period to three weeks.

86.
The IAB expresses the concern that a three month period may not be suitable in all cases because certain institutions, such as those in the education sector, may consume time by using "unwieldily procedures" in their hiring practices. However, the Department has no experience of advertisements with a closing date longer than three months. I do not believe that I should make the process more unwieldily for everyone to accommodate specific circumstances or institutions which could bring themselves into compliance by acting more efficiently.

87.
E&A raises the issue of religious workers requesting that they be exempted from work permit requirements while being able to apply for permanent residence in terms of section 26(a) of the Act. I am mindful of the required separation between church and State which demands churches to be treated like any other charitable or beneficial not-for-gain, organisation or entity. I am also mindful that the freedom of religion entrenched in our Constitution has lead to the multiplication of religious organisations and that it is not within the scope of any government to determine what is a church or a religious organisation. Hence, religious workers are those who are employed by

any charitable organisation which in good faith, for purposes other than those of the Act and these Regulations currently and normally styles itself as a church or a religious organisation. Accordingly, the only distinguishing criteria, is whether or not the religious worker concerned is paid or not. If such worker is paid he or she will require a work permit and he or she will need to be paid on the same basis as our nationals are in the same organisation or an immediately comparable one. If he or she is not paid, he or she may qualify for a visitor's permit. In this latter case, such foreigner will need to pursue his or her aspirations for permanent residence on grounds other than those specifically set out in section 31 of the Act. CON argues that this provision is inconsistent with the enabling provision of the Act as it creates an exception to section 19(2)(a) of the Act. I do not agree as such section requires the Department to be satisfied that there are no nationals ready, willing and able to take up the position offered to a foreigner. The manner in which the Department becomes so satisfied is left to regulations to determine. Therefore, it is appropriate to have a presumption that in respect of certain categories the technique of advertisement is either inappropriate or not necessary. CON is concerned that the category of "key personnel at management level" is too broad. However, in the Department's past experience it is clear that attempts to define such a category more narrowly create administrative difficulties and do not foster the stated policy of acquiring necessary skills and promoting economic growth. CON is also concerned that a provision relating to key personnel undermines the Employment Equity Act. However, this does not seem to be correct, as a matter of law as the provisions of the Employment Equity Act are binding on the employer and will accordingly limit the number of key personnel who may be employed over and above the quotas determined by such an Act. Obviously, foreigners are not amongst the class of previously disadvantaged, whom such Act intends to favour, and therefore they cannot be factored into the equation set out in the Employment Equity Act. CON also argues that a provision relating to key personnel may lead employers not to train nationals to fill vacancies in management. Incentives for training are in place in many pieces of legislation, while it is government's policy to ensure that qualified immigration of skilled foreigners is promoted. Therefore, I cannot accede to CON's request that the provision relating to key personnel be deleted. IBN suggests that the occupations listed in Schedule E should be exempted from the requirements of (6)(e) relating to the Department of Labour. However, sub-regulation(6)(e) deals with ensuring that the thresholds which provides parity of conditions of the employment of a foreigner and that of a national are maintained on an equal level to avoid that foreign labour undermines labour conditions and standards.

88.
In answer to INT's question, I do not see the need to clarify whether categories of exceptional skills or qualifications will be supplied to immigration practitioners by my Department, because my Department would not have the authority to produce any such lists. Lists of required , not exceptional, skills or qualifications with related quotas may from time to time be published by notice in the Gazette in terms of and for the purposes of regulation 28(4)(e) which deals with a different type of quota work permits. In respect of exceptional skills or qualifications permits, at this juncture, my Department will make a case by case assessment on the basis of the information supplied by the applicant who carries the burden of showing that he or she has exceptional and documented skills or qualifications in any meaningful and socially valuable category of human endeavours.

89.
PWC objected to the intra-company transfer work permit being only for two years. However, this is a statutory requirement. PWC further suggested that the intra-company transfer permit should be for up to five years including renewals. This type of permit is not subject to a "needs test" which determines that the foreigner is somehow more needed than an available, ready, willing and able national. As such, it is designed to accommodate employers' needs on a short-term basis. If the need is for longer period, the employer may resort to quota, general or corporate permits. However, in order to accommodate the concern expressed the sub-regulation has been amended to provide for one or more renewals on condition that there is a good cause for this type of permit to apply for a longer period. It will be the applicants burden to justify why, under the circumstances, a renewal is justified and necessary.

90.
CFI, BSA, CKA, PWC, AOS, VDW and HGA have commented that the financial requirements set out in this regulation are too high. VDW targets its criticism on the basis of the regulations I made in terms of section 52 of the Act which had a higher threshold than the draft regulations. It has been clarified in the draft regulations that the long-term visitor's permit, which carries lower financial requirements, is also available for a purpose of stay

which is effectively that of retiring in the Republic on a long-term temporary basis or on a seasonal basis. The draft regulations already lowered the financial requirements previously imposed. As BSA and HGA concede the contribution of retirees to our country is in their capacity to spend money while in the Republic, which supports economic growth and generates indirect revenue, as they do not necessarily pay direct taxes while they receive government services and consume a pro-capita portion of the state budget. It can also be pointed out that most other countries do not have a permit of this nature. For this reason I cannot agree with CFI's averment that in other countries one may retire with a much lower monthly income. CFI argues that even immigrants of lower income brackets are good immigrants, which I do not question. However, from a policy viewpoint one needs to determine what contribution they may make towards our country's growth. It is not our policy to promote population growth through immigration and, therefore, in addition to the statement that certain potential immigrants may be good people, one needs to satisfy the public policy consideration that they may be specifically useful to our country's growth or otherwise needed. INT questions why an applicant who has property valuing between 0.5 and 5m should meet these financial requirements. The Act utilises the criterion of net worth to avoid a valuation of assets which may be encumbered. INT also questions how an applicant not qualifying in terms of section 20(1)(a) of the Act can qualify in terms of section 20(1)(b). It does not follow that someone with a high net worth must necessarily have a retirement plan or an annuity. I agree with SAC's comment that, as a matter of policy, it is our intention to encourage people who "bring lots of hard currency" as SAC's puts it, to retire in South Africa permanently or on a seasonal basis.

91.
IBN argues that the provisions of this regulation are unfair because they cater for individuals with high net worth or alternatively for those with high pensions or annuities, but they exclude those who have a substantial net worth and a substantial income from pensions or annuities. IBN proposes that the net worth requirement be decreased when the applicant shows income from pensions or annuities, or that the pensions or annuities requirement be decreased on the basis of the applicant's net worth. This would require the administration of an equation with two mutually defining functions, which would be difficult and cumbersome. In light of what I have explained in a preceding relevant Endnote, which highlights how applicants may also use the visitor's permit to achieve substantially the same purpose, and that they are not required to actually bring their money into, or have their pensions or annuities income available in, the Republic, I am satisfied that in order to simplify procedures without consuming excessive administrative capacity, as intimated by paragraph (a) of the Preamble of the Act, the retired person permit should be available to those who may squarely meet its requirements as set out herein. Such requirements are also formulated in two alternatives, which in itself casts a wider net. The requirement that pensions or annuities be capable of generating a life-long income is tied to the nature of the retirement permit, which albeit issued for four years, can be renewed every four years expeditiously and, effectively, almost on the basis of the same documentation originally submitted to the Department. IBN also complains of a discrepancy between the R20 000 stipulated in sub-regulation (2) and the R15 000 stipulated in sub-regulation (3) of the draft regulations, which figures have now been reduced. However, this discrepancy was formulated to accommodate comments IBN previously made, and tries to move towards cross referencing the net worth requirement with the pension or annuity requirement. In spite of income being volatile and capable of dramatically diminishing over time, in sub-regulation (3) an income figure has been used rather than an annuity value or pension not so much as a requirement but to qualify the nature of the net worth, for net worth by itself may not be necessarily productive of income, as would be the case of the net worth consisting of a collection of paintings. The IAB also insists that the financial thresholds for retired person permits be reduced, indicating that it is not convinced that retired persons place any burden on the state or our communities, and that under most conditions their presence in the Republic would be beneficial. The IAB suggests that in addition to reducing the relevant threshold to R2 000 000, in respect of Section 20(1)(b) of the Act and R15 000 per month in respect of Section 20(1)(a) of the Act, I should require proof of medical insurance. However, for the reasons set out above, I am not convinced that I would be serving the interests of the Republic in such a manner. This type of permit is a fast track for foreigners who do not wish to comply with the requirements of an extended visitor's permit. If the requirements of the two permits were the same, the retired person's permit would become redundant. Moreover, from the viewpoint of permanent residence, there is a lasting interest in ensuring that those who become permanent members of our communities exclusively on account of their initial financial means do not become public charges at any later time in spite of possibly changing economic conditions. I have considered the yields of annuity retirement accounts as set out in "ABSA: Financial Planning for After Retirement" of 2002, indicating that a post retirement inflation linked income of R200

000 per annum, would require a capital investment in an annuity of R3 700 000 at the age of 65. Considering that there are no minimum age thresholds to qualify for a retired person's permit which could be obtained at the age of 18, I feel that the thresholds indicated in this Regulation, as I have further reduced them, are now in order. I am also uncomfortable in requiring my Department to verify whether an applicant has and maintains medical insurance coverage, which would often be taken up abroad. For this requirement to be meaningful complex investigation into matters dealt with in foreign countries as well as ongoing monitoring would be required.

92.
LSN argues that it is harsh to withdraw the permit which has been extended to a spouse, in the case of termination of the spousal relationship. However, this is a consequence of the fact that the permit has been extended and the spouse is not entitled to it. It also decreases the incentive for spousal relationship of convenience. The harshness of the provision, if any, is limited by the exclusion of the case of death. LSN suggests that a Regional Director should have the discretion to waive this requirement for "specified reasons" but does not specify what such reasons could be. The difficulty in specifying such reasons shows the problematic nature of such a suggestion which would reopen the type of discretion which paragraph (a) of the Preamble of the Act intends to curtail. The IAB suggests that this permit should not lapse, but rather be capable of being withdrawn. As I indicated in previous Endnotes relating to such type of proposal, I cannot accept this approach which would require a presently impossible level of monitoring on the side of my Department and contravene the spirit embodied in other sections of the Act.

93.
IRU levels an unclear criticism at this regulation on the basis of the Department not having sufficient capacity in general, and being unable to conduct an inspection of workplaces, and the monitoring of permit compliance. However, the very purpose of the reform and migration control is that of reducing administrative capacity employed in the issuance of permits to make it available for law enforcement, monitoring of work permits and inspection of workplaces. Corporate permits is one of the techniques used to reduce the capacity otherwise employed to issue effectively and properly all the required work permits.

94.
BSA argues that the training fee is inappropriate in respect of the mining contracting industry and to a lesser extent in respect of agriculture and construction because the Department can set limits on the foreigners employed under the relevant corporate permit and such limitation may adversely affect the economics of labour intensive mining which, according to BSA, are in precarious conditions. It is not correct that the numeric limitation referred to in regulation 30(8) is a tool used by the Department to determine how many foreigners a corporate employer may need. It is rather the basis on which the requirements for specialised training and/or the training fee are to be assessed. To make it clearer that the numeric limitation is not a "needs test" the erroneous reference in the draft regulations to section 19(2) of the Act has been corrected to refer to 19(2)(b) only to the exclusion of section 19(2)(a). Any government will be supportive of our mining industry, which is one of our major national industries. I am not in the position to assess BSA averment on the impact of the training fee on that industry, but the Ministers of Trade and Industry and/or Minerals and Energy are, and, therefore, regulation 30(8)(b)(iii) makes provision for the training fee to be waived or reduced at their request. BSA's request is based on its averment of the present conditions of the industry which are said to be worse now than before. By the same token, such industry could be better off in the future than it is now, hence the need to provide for the possibility of a waiver rather than an outright exception set out and fixed in regulation. Moreover, the training fee is just one of the elements of the negotiated process leading to the issuance of a corporate permit, the second being the training programme referred to in regulation 38(2)(a). I cannot exclude an entire industry from any needs test which can satisfy the public policy consideration that a need exists to employ foreigners rather than nationals in a field which requires a low level of skills. BSA makes reference to a Nedlac agreement, which, I am advised, does not exist and would in any case be irrelevant in this process, relating to consultation with neighbouring countries. I am advised that the Nedlac record only show discussions relating to consultations with neighbouring countries in respect of the legislative option of setting aside the system of compulsory deferred payment. In making its comments on this sub Regulation, the IAB has acted in a somehow peculiar manner providing me with contradictory advice, indicating that in respect of certain aspects "some members of the Board argue" for one thing, while in respect of others there are different views. In respect of some other aspects an indication exists that "the majority of the Board is of the opinion [...]". In this and other respects, at times, the IAB seems to have acted as a receptacle of different views, enabling each

of its members or components who had a concern or viewpoint to express it and have it recorded in the Board's final recommendation. However, the purpose of the IAB is not that of merely collecting views, but rather that of merging and reconciling them in a difficult process of dialogue. Its very composition makes it the venue where views ought to be merged, mutually influenced and tempered, rather than merely expressed and voiced in their original form. Some of the concerns expressed by the IAB in respect of this regulation relate to the lack of guidelines for the determination of the training fee. However, the plain language of this regulation indicates that there are plenty of guidelines. The IAB further voices the concern that the practice amongst the various Regions of the Department may not be uniform. The Director-General has the responsibility of ensuring uniformity of application of the Act and these Regulations. If discrepancies occur, the matter can be brought to the attention of the Minister and the Director-General, who have the legal duty to attend to it. Moreover, the IAB raises issues relating to the training fee with arguments which are somehow hard to follow. One relates to the notion that the proceedings of such a fee may not have been budgeted for by the Minister of Finance, which I do not know to be true but would seem to be irrelevant in any case. The training fee is the device used within the complex formula aimed at determining the threshold of "need" for foreigners to take up job opportunities rather than our nationals within a corporate permit environment. The employer would have the right to employ as many foreigners as it would wish in terms of, and subject to section 19(1) of the Act; but as the application moves into a section 21 environment, the possibility exists to reduce or even do away with the training fee by capturing the "needs" assessment by means of the other factors contemplated in section 21 and this regulation. The concern that the imposition of the training fee may be arbitrary and therefore illegal because there are no guidelines, seems misplaced as such guidelines exist, such as the maximum cap and specific criteria for its reduction. The IAB expresses a concern on the impact of the training fee on the gross domestic product of SADC neighboring countries which have an interstate agreement with the Republic to provide labour on the basis of the so-called system of deferred payment. The IAB also makes reference to certain discussions in NEDLAC on April 16, 2002, which I find puzzling as such discussions are not equally recollected by the representatives of the Department and, I am advised, the relevant minutes were never formally approved. According to this view of the IAB, consultation with SADC partners to be conducted at the initiative of the Department of Foreign Affairs would have needed to take place prior to the finalization of this aspect of corporate permits. However, no such venue exists for formal consultation of this type to take place and eighteen months have now lapsed without the process having even been started. Furthermore, the text of the relevant interstate agreements does not seem to contain any provision which collides in its letter or spirit with what is set out in these Regulations. Similarly, I do not see how anything in this regulation is discriminatory against foreign workers as they, by definition, are in a condition of temporary employment. The new advantage of the new system of migration control is that after five years of such temporary condition of employment, foreign workers now qualify by rights for permanent residence. The proposal of "some members of the Board" that the level of the fee be determined by the Department in consultation with the Department of Labour and the Department of Trade and Industry is in itself contradictory, as one cannot act in consultation with two different entities. Furthermore, such proposal collides with the spirit of the Act and with the entire new system of migration control which wishes to rely on market force dynamics to determine the relevant levels of required foreign workers, rather than on government decision making which is bound to be deficient, tardy and less than optimal from an economic viewpoint. The proposal that the training fee should not apply in respect of corporate workers under interstate agreements until consultation with SADC neighboring countries has been concluded, encounters the difficulty that no such process has begun, nor does a formal venue seem to exist for it to take place. The request that suitable guidelines be developed to direct the discretion of Regional Directors is well taken. The Department already has such guidelines in place and any discrepancy in the uniform application of the Act and these Regulations shall be dealt with by the Director-General, failing which can it be brought to the attention of the Minister. The IAB indicates four aspects of such guidelines which, being an administrative matter, have been referred to the Department and the Director-General.

95.
CON expressed its concern that this provision could enable employers to dismiss employees unfairly by terminating their immigration status. As set out in the Endnote relating to regulation 28, immigration law cannot concern itself with the underlying contractual relationship on which an employment relationship is based. If the dismissal is unfair recourse and remedies lie within the parameters of labour laws. It must also be considered that all work permits are temporary permits and relate to temporary employment positions. However, it seems that CON misread regulation 11(b)(ii) in that such a regulation gives the power to the Department to withdraw or modify a corporate

permit when some of the relevant conditions on which such a permit was issued materially changed. The provision does not have a bearing on whether under the same circumstances the dismissal of employees may be acceptable from a contractual or labour relations viewpoint.

96.
The IAB has requested me to make certain clarifications in respect of the interpretation of section 22(a) of the Act as it applies to public higher education institutions. In the first place, public higher education institutions are considered by the Act as distinct from organs of State because in terms of section 239 of the Constitution, an organ of State needs to be exercising a public power or performing a public function, which a university may not be necessarily deemed to do. However, in respect of whether universities and technikons are organs of State, they are undoubtedly covered by section 22(a) of the Act. However, students studying at such institutions are not exchange students, nor do they require an exchange permit unless they are part of an exchange programme conducted with an organ of a foreign State. Therefore, for instance, only foreign students studying at a university in pursuance of the Fullbright Exchange Program of the US Government will receive an exchange permit while the other foreign students from the same country, effectively followining the same curriculum, may qualify only for a student permit.

97.
UNR objects to the statement contained in Annexure 52 in which the holder of an asylum permit admits that he or she understands that upon expiry of such permit he or she shall become an illegal foreigner and may be guilty of an offence. I have modified the relevant language from what was stated in the draft regulations, but I do not share UNR's concern that the statement in question violates the constitutional principle against self incrimination. All that is required is an understanding on the side of permit holders of the basic fact of law that at the expiry of the permit he or she will become an illegal foreigner and therefore liable of committing an offence and being punished accordingly. It is not an admission of guilt. Furthermore, I do not see how such statement would relate to the principle of *non refoulement*. As I indicated in an earlier Endnote, the Act only extends additional protection for asylum seekers over and above what is set out in the Refugees Act enabling them to be legal for the period from when they cross the border to when they apply for the protection extended under the Refugees Act. UNR also argues that the asylum seeker validity period should be extended from 14 days to 30 days but gives no reason for its request. 14 days seems to me more than ample time for anyone to move from the point of entry to a refugee reception office. The only purpose of stay under this permit is that of going to a refugee reception office and applying under the Refugees Act, and a longer time would not serve this purpose, but would enable the permit holder to conduct other activities which would create an even greater incentive for this permit to be abused. I am mindful that currently more than three fourths of asylum petitions are found to be unwarranted, which indicates that the vast majority of those utilising the system are in fact abusing it. UNR seeks clarity of what an asylum seeker can do if, on reasonable grounds, he or she cannot reach the refugee reception office within the permit validity. The answer to the question, which will arise in respect of any validity period lies in my statutory power to condone non-compliance with any prescribed requirement and the power of the Director-General under these Regulations to extend any deadline set out in regulations. The concern about the level in which the system of refugee protection is presently being abused by those who are not entitled to its benefits, also justifies the information requested in paragraph 3 of Annexure 52, to which the UNR objects. I do not share the UNR's and UCT's view that obtaining such information may lead to an unfair outcome in respect of the application of genuine asylum seekers, as there are no bases in law to deny asylum to one who is entitled to it merely because he or she chose not to apply for asylum in a country which he or she transited through. I am convinced that these Regulations comply with the Republic's obligations and the 1951 Convention. It is also significant that the opening of section 2 of the Refugees Act which entrenches the *non refoulement* principle begins by stating "notwithstanding any provisions of this Act or any law to the contrary, ..." which confirms that nothing in Annexure 52 is capable of affecting the effect of such a principle. The IAB makes a number of comments about the system of asylum seekers and refugee protection. I am glad that the IAB is taking an interest in the matter because I would like to see a closer reconciliation of policy and administration aspects relating to refugee affairs and immigration control and I would like to see greater administrative and policy convergence. However, the two matters are distinct and separate. Matters relating to refugee protection are not covered by these Regulations, and are not part of this regulation-making process. Therefore I will not take into account nor respond to the IAB's comments in this regard, even though they will be noted for other purposes and attended to in other ways. The asylum permit contemplated in the Act has the

purpose only to allow an asylum seeker arriving at a port of entry to proceed to a refugee reception office, so as to ensure that anyone in the Republic does in fact have a status. Otherwise such person would be an illegal foreigner liable to be arrested by the police and deported by the Department, which would contravene the purposes of refugee protection, both in terms of our law and in terms of international law.

98.
LSN, UCT and UNR argue that the word "may" should be substituted with the word "shall". I agree that under most circumstances any foreigner seeking asylum shall be entitled to this permit, and that, in this respect, the discretion of an immigration officer is extremely narrow. However, there might be cases of prohibited persons, such as terrorists, in respect of whom a different procedure will need to be applied. These people will need to seek the procedures under the Refugees Act, only without the additional benefit and protection extended to them at the port of entry in terms of the Act. In fact, this permit enables the holder to freely circulate within the Republic, which is a benefit, which neither the Refugees Act nor the 1951 Convention require the Department to extend to asylum seekers under all conditions.

99.
IRU criticises this time frame arguing that an asylum case takes more than one year to be processed, which is irrelevant as this permit only deals with the time between the foreigner entering the Republic and when an application for asylum is lodged.

100.
CKA contends that paragraph (g) of the introduction of Annexure 24 adversely affects immigration practitioners. I do not believe it to be so. I have nonetheless clarified what was meant in such paragraph. INT questions why the period of work permits issued under the Aliens Control Act cannot be computed for purposes of section 26(a) of the Act. The answer lies in the Act not allowing it.

101.
E&A requested a textual connection between this provision and section 28(c) of the Act which I do not deem to be necessary.

102.
INT questions how the Department will conduct this assessment. In terms of the Act, it is the burden of the applicant to demonstrate the existence of a good-faith spousal relationship. This regulation defines the discretion of the Department, and, therefore, will enable applicants to satisfy their burden by making a *prima facie* showing that they entered into a spousal relationship for reasons other than acquiring benefits under the Act. Once such showing is made, the burden will shift onto the Department to motivate why the Department is not satisfied that a good-faith spousal relationship exists.

103.
INT questions the constitutionality of this provision because of its not requiring a court warrant. However, this provision does not give the Department the right to enter a dwelling without consent. If the Department may not satisfy its need of an *in loco* inspection, it may not reach satisfaction that a good-faith spousal relationship exists and therefore may have reason not to issue a permit. Allowing the Department to conduct the relevant investigation, when there is good cause to do so, is part of the burden the applicant needs to satisfy, to show that he or she qualifies for the benefits under the Act. The applicant may refuse to provide the relevant information, or grant the necessary consent in this respect, or for other aspects such as fingerprinting, in which case he or she may not receive the desired permit, or will need to appeal against its refusal arguing that the Department had no basis to request an *in loco* inspection and exceeded its discretion. In conducting inspections of this type, as well as in other stages of the processing of an application, the Department must ensure that the applicant has the opportunity to be assisted by his or her attorney or immigration practitioner who must be contacted if their appearance has been entered on file. The IAB suggests that the consent requirement be made explicit. I believe it is explicit, and this Endnote meets any possible need for greater clarity.

104.
E&A and IRU raise the issue of the insufficient administrative capacity of some of the Department's offices, which may impair the attainment of this target date. I am aware of such difficulties, and for such reason the word "endeavour" captures the need of taking into account existing administrative capacity shortcomings. However, it is important that one translates government commitment to prompt delivery of services into actual deadlines, even though the underpinning legal obligation may be subject to a best effort clause. I am also referring to my comment in respect of regulation 2(10) and sub-regulation (8)(g). The IAB fears that thirty days is not a realistic deadline. However, after having consulted with the Department's acting Chief Director of Migration and other officials in my Department, I am advised that such deadline can be met in most ordinary cases, and therefore I do not see why I should lower our level of expectations of quality service delivery.

105.
I have been requested to consider imposing a language proficiency test in relation of section 27 permanent residence permits on the basis of the argument that a foreigner becoming a permanent member of our national community should be able to speak one of the official languages. Such tests are common in immigration systems of foreign countries. However, I am confronted with grave practical difficulties. The Department cannot test language proficiency in an objective manner and as matter of routine, and will need to rely on objective tests developed and administered by others and yielding uniform results wherever administered around the world. Such tests exist in respect of English, such as the Test Of English as a Foreign Language [TOEFL], but I am not aware that anything analogous to the TOEFL has been developed or is routinely administered around the world in respect of the other ten official languages of the Republic. If such tests existed, they should also have a coordinated passing threshold. If possible, I would not wish to impose a language requirement based on English only. The IAB is requested to consider this issue both from a practical and a constitutional viewpoint and make a recommendation for future regulation making on the matter.

106.
IBN queried the relationship between the possibility that the processing of a permit for permanent residence may require interdepartmental enquiries, and the target date set out in sub-regulation (7). It must be pointed out that any of such enquiries must be prompted by a reason, and that they are not necessarily part of the routine processing of a permanent residence application. When, for good cause, the processing official deems it necessary to utilise sub-regulation (2)(g), he or she shall endeavour to nonetheless comply with sub-regulation (7). However, since sub-regulation (7) is not a firm deadline, but merely a target date underpinned by a best effort obligation, as evidenced by the word "endeavour", the need to resort to sub-regulation (2)(g), and the fact that the processing of the matter covered by such sub-regulation (2)(g) could not be completed within the target date, rightly justifies going beyond the processing period set forth in sub-regulation (7). However, it is not permissible for the Department to delay the processing of a complete application or the issuance of a permit because awaiting the outcome of investigations which the Department may wish to initiate either directly, for instance through its Inspectorate, or indirectly, for instance by means of a report requested from the National Intelligence Agency. If any of such investigations yields a material flaw in the information supplied by the applicant, the permit may be revoked or deemed invalid *ab initio*. The information requested in the application is what suffices to and is relevant for the issuance of a permit, and any investigation shall relate thereto and not delay the issuance of a permit otherwise warranted by the information and documentation provided through the application.

107.
The relevant year period runs from the effective date of these Regulations. IRU questions how applications will be tracked to rank them in respect of the limits, and how such limits are compatible with Regional offices issuing the relevant permits. This is an administrative matter. Obviously, each application lodged at and processed by Regional offices will need to be lodged within the mainframe of a unified number system under each of the categories. It will be the responsibility of the applicant to determine under which of the categories set out in this sub-regulation he or she is seeking permanent residence. IRU misreads this process suggesting that an application which exceeds the year limit will need to be lodged again, when in fact, consistent with international practice, such an application will be placed on a waiting list according to its number and will be processed against the yearly limits

of the following year(s). Only at that time such application will be deemed complete and the 30 days deadline shall apply.

108.
AOS argues that R5 million would be a more realistic figure. Under the Regulations adopted in terms of section 52 of the Act, I set this threshold at R20 million and reduced it in the draft Regulations to R10 million. Considering that this category applies to applicants who have no other grounds to become permanent resident, that the potential financial contribution through their spending while in the Republic, that it is possible that they do not work and that each person consumes a proportional share of Government services and related State expenditure, I am satisfied that a R10 threshold is appropriate. CFI argue that even immigrants of lower income brackets are good immigrants, which I do not question. However, from a policy viewpoint one needs to determine what contribution they may make towards our country's social and economic growth. It is not our policy to promote population growth through immigration, and therefore, in addition to the statement that certain potential immigrants may be good people, one needs to satisfy the public policy consideration, that they may be specifically useful to our country's growth or otherwise needed. IBN's concern that the financial criteria is excessive and unfair also meets its response in these terms. IBN's concern that holders of permanent residence permits acquired on these grounds may not be allowed to work is misplaced. In fact, all holders of permanent residence permits, including retired persons, are allowed to work as in terms of section 25(1) of the Act, as they enjoy all the rights, privileges, duties and obligations of a citizen, save for those which the law ascribes to citizenship. IRU feels that the figures used in respect of this sub-regulation are too high, but seems to relate this provision to the general bulk of applications and to investors, rather than recognizing its residual and marginal nature, as a permit of last resort. PWC agrees with this characterisation but draws the conclusion that this permit is redundant, as the relevant foreigner may qualify under the retirement category. However, the residual value of this permit is in not requiring the applicant to declare his or her intention to retire. IRU is wrong in comparing the amount to be paid to foreign examples, as in many foreign countries such type of permit does not exist, and often when it does, it calls for much higher payments. The relevant net worth need not be in the Republic. There is no obligation on the side of the applicant to move any funds to the Republic at any time, and, therefore, IRU is incorrect in arguing that the payment to the Department is purposeless because the foreigner concerned will, in any case, bring money into the Republic. INT confuses this requirement with that of investing in South Africa. It also erroneously argues that someone with a property in South Africa is not a burden to the State. In the absence of another basis for taxation, property ownership only triggers levies and rates which finance services rendered to the property and municipalities without addressing the cost that any person in the Republic represents as a share of the national budget which cost, in the case of foreigners, is to be offset by some tangible or intangible benefit to the Republic, such as their being needed in the workplace or their spending money in the country. INT makes a general comment that there is a gap between the grounds for residence in the Aliens Control Act and those in the Act, arguing that the latter are more restrictive than the former and that these Regulations should have bridged such gap somehow. I do not agree with the premises of the argument. The Act creates a large number of grounds, which, from a practical viewpoint, should be able to accommodate all the foreigners who have a contribution to make to our country. If future practices show that such is not the case, these Regulations may be reconsidered. Moreover, in terms of section 31(2)(d) of the Act, I have the power to waive any prescribed requirement for good cause. I will undoubtably regard it to be good cause if, from a practical viewpoint, it appears that anyone with a meaningful contribution to make to our country's growth and economy, cannot be accommodated under these Regulations. The IAB regards these financial thresholds as being excessive on the basis of the assumption that foreigners with a lesser amount of money or financial resources available are not going to be a burden to the State. However, the issue here is one of determining the grounds to allow someone to reside in the Republic permanently, in cases where there are effectively no other reasons or grounds for such person to become a member of our national community. The thresholds used in other countries which have similar permits are in fact higher while, many countries do not even have a permanent residence permit of this type.

109.
RLA would wish permanent residence to be extended to relatives beyond the first step of kinship to include brothers and sisters of citizens and residents. However, such provision does not exist in the Act and would exceed my powers. It can also be noted that permanent residence is not extended to siblings in most countries the immigration systems of which are known to me. Members of the public have often not immediately appreciated the import of

the relationship of kinship set out in the Act. For clarity sake I point out that the first degree of kinship includes the applicant's parents, children, siblings, including 'half-siblings' (as the common antecedent is not counted) and spouse, while the second degree of kinship, in addition to those included in the first degree of kinship, includes grandparents, grandchildren, nieces and nephews, aunts and uncles, siblings' spouses, spouse's parents and spouse's children who are not such applicant's own children.

110.
The IAB suggests that I prescribe this item with reference to the list held by the World Health Organization. However, since such list is not readily available to those consulting these Regulations, I feel it necessary for this item to be duly prescribed, which is also what is required in terms of the Act, rather than making an indirect reference to something published and prescribed elsewhere.

111.
LSN reiterates its contention that Annexure 26 requires written representation to be attached because of the last sentence of item 2 of the recipient's statement. However, as I indicated, in respect of Annexure 8, the asterisk clearly indicates that a portion can be deleted and therefore there is no obligation for a recipient of that form to make a declaration at that time. However, if such declaration is made it should be recorded on the form that the declaration is attached to it. Such declaration can be made at a later time as set out in the Act and in these Regulations, and in a separate writing which is subject to no specific requirement of form. Also in this respect LSN argues that the PAJA should apply. As I indicated in an earlier Endnote by virtue of its own provisions the PAJA does not apply.

112.
CKA suggests that we amend this section to include previously registered immigration agents who failed to meet the deadline to register as immigration practitioners set out in the Immigration Regulations adopted in terms of section 52 of the Act. However, we have dealt with this matter in Schedule F, effectively creating a new deadline for registration for all those concerned.

113.
The UNR fears that stateless people and refugees could be forcefully deported to a place where they could be prosecuted in violation of the principle of *non refoulement*. However, it is for the stateless person to claim asylum protection, in which case the Refugees Act will take precedence over the Act, and this provision will not apply.

114.
UNR express its concern that enforcement actions against illegal foreigners may include persons having refugee permits. This concern is unwarranted in law, as those with refugee permits are not covered by the definition of illegal foreigners, as they are legally within the Republic.

115.
The IAB expresses a view of the SAPS in respect of certain aspects of this regulation, rather than expressing its own views after a process of collegial deliberation. Nonetheless, the view expressed is that the SAPS should have the exclusive function of investigating crimes, on account of its "skills and expertise". This is incorrect in various respects. First, it is the intention of the Act to create dedicated skills and expertise in the field of migration control, which at present the SAPS does not have. Such expertise develop from a comprehensive function of law enforcement which starts from border control and includes the monitoring of permit conditions as well as law enforcement at a community level and in workplaces. Second, the Department of Labour, the Department of Health and many other organs of State have the responsibility of enforcing laws which they are called upon to administer, including the power of pressing charges against those who breach them. Third, also under the previous Aliens Control Act, the Department was authorised to utilize the Criminal Procedure Act, and members of the Department were designated as peace officers.

116.
LSN argues that in the first bullet item "NB" of Annexure 31 the word "will" should be changed to "may" to reflect section 34(1) of the Act. However, this form is to be used when the decision to detain the person concerned has

been made and therefore the word “will” seems appropriate.

117.
SAH complained that this regulation does not provide for the constitutional rights of a child. However, I feel that it is both inappropriate and unnecessary for me to restate in regulations the contents of the Constitution which obviously apply to the extent set out in the Constitution regardless of anything set out in these Regulations. It must also be kept in mind that the purpose of detention within the immigration context is neither that of punishing detainees nor isolating them from external contacts. The only purpose is either that of conducting an examination to ascertain their status or to maintain them within the control of the State in order to deport them as soon as possible. Within this context, international practice shows that the interest of a child is best served by keeping children with their parents or other familiar detainees who, at times, are foreigners who may not be familiar with the Republic’s official languages. SAH also complains about the conditions of detention in centres under the control of the Department. Irrespective of the accuracy of such a complaint, the matter is factual and does not have a bearing on the contents of these Regulations. SAH urges me to adopt regulations providing strict guidance and control on the manner in which places of detention under the control of the Department are administered, covering a number of administrative matters relating to the running of such centres, over and above the standards of detention contemplated in these Regulations. Such matter was not covered by the scope of the notice I gave in terms of section 7(1)(a) of the Act or by the draft regulations I made in terms of section 7(1)(b) of the Act. Therefore, If I become convinced that the matter must by necessity be dealt with by means of regulations rather than administratively, of which I am not presently convinced, and after I receive a recommendation from the IAB in this respect, I will consider the need to produce additional regulations in this matter on the basis of a separate process. SAH advocates the need for an internal inspectorate which would verify compliance with such guidelines. However, provision in this sense has already been made in section 47(1) of the Act which obviously applies to how the Department manages its detainees or causes them to be managed. SAH also urges me to adopt regulations to implement section 47 of the Act, which I have done in regulation 50(10). The IAB suggests that the standards referred to in this regulation be expressively set out to prevent abuse and to make them more widely known. I have instructed the Department to compile such standards and to make them available in a separate publication, which will be distributed to all those affected or interested. The IAB is invited to conduct any relevant research and make recommendation in respect of what may be included in future regulations.

118.
SAH would wish for regulations to clarify what are the “reasonable grounds” which justify an immigration officer to take a person into custody to ascertain his or her status. However, section 41 of the Act indicates that reasonable grounds must exist to justify that the relevant officer “is not satisfied that such person is entitled to be in the Republic”, which is quite a high standard. Trying to unpack this standard may be as complex and self defeating as attempts made to unpack the notion of “probable cause” used in the field of criminal law in which the potential risks for freedom or liberty are much higher. As in the case of probable cause, also in this case it depends on the circumstances of the case, as much of this assessment is circumstantial. SAH has not given any concrete suggestion on how to define or unpack the content of the relevant provision of section 41. However I agree that racial profiling ought to be avoided and inspiration must be drawn from the spirit of section 9 of the Constitution. I have requested the IAB to supervise a research project, in which the SAH is invited to make inputs, to create administrative parameters to ensure that the effective enforcement of the Act does not produce xenophobia. I think that concerns of this nature ought to be addressed in terms of how the Department enforces the law rather than on the content of the law as set out in the Act or these Regulations.

119.
CKA draws the conclusion that the intent of these Regulations is that of rooting out immigration practitioners who, in its erroneous reading, would be regarded as a despised group. Nothing could be further from the truth. The policy underpinning these Regulations is that of strengthening the profession of immigration practitioners by giving it maximum recognition and credibility, with the view to fostering the development of the entire system of migration control in such a way that both the Department, as well as the public may increasingly rely more on a well regulated profession of immigration practitioners. The very notion of provisions which promote the self regulation of the profession underpins the confidence in the ever-growing role which this profession must contribute towards in the development of immigration law. This regulation addresses issues and concerns, which may undermine the

credibility of the profession or create problems for its clients, on the same basis as other professions are equally regulated to protect consumers and clients. IRU argues that immigration agents under the Aliens Control Act ought to be automatically regarded as immigration practitioners. However, this does not seem to be consistent with the spirit of the Act. In many cases, since the law has changed, knowledge of the new system will need to be tested together with ensuring compliance with the Act and these Regulations. PWC argues that the R 3,000 fee set out for membership in the Association contemplated in Schedule G is too high. However, such fee has been calculated on the basis of the cost necessary to launch the new profession and guaranteeing high quality testing and monitoring. If in excess of what is strictly necessary, the funds collected must be used for the benefit of the members of the Association.

120.
CKA would wish to limit the exemption to attorneys and advocates. However, it is important to clarify what is meant in section 14(6) of the Act with the expression "conducting the trade of representing another person in the proceeding and or procedures" of immigration control. Travel agents are not involved in such a trade, as they trade different products and services. Similarly, persons operating abroad in the capacity of travel agents, business procurers or advisors of various types, many of which are impossible to classify as they operate in different legal and social contexts many of which are unknown to us, are obviously not covered by the statutory language and its underlying intention. PWC asks for the exemption of chartered accountants in light of the role which they play in terms of the Act. However, such rule is based on the chartered accountant's knowledge of his profession, not of immigration law, and if a chartered accountant were to act as an immigration practitioner, he or she would need to be tested and abide by a different code of conduct which is not necessarily identical to the one governing the accountants' profession. In response to the concern expressed by the IAB, I need to point out that this regulation intends to clarify the implementation of the Act as it relates to the interpretation of the word "trade" rather than create an additional exemption. However, it does not preclude the statutory word "trade" from being subject to other interpretation by a court of law. It is obvious that not all activities relating to matters contemplated in section 46 of the Act are in fact "trade".

121.
LSN argues that the three day deadline set out in Annexure 49 is unreasonable. I disagree, as the function of this administrative fine is that of seeking a quick resolution and, in any case, the fine could be due even without such grace period. LSN also argues that there is no provision in the Act for a grace period. However, that is a matter conducive to the implementation of the Act, which relates to how a fine is administered and collected and falls within the broad scope of regulation making set out in section 7 of the Act. LSN argues that regulation 47 does not allow the Department to utilise their discretion in assessing administrative offences. The Act leaves this discretion to the regulations and, as a matter of policy, I feel that it is advisable not to impose the burden of such discretionary exercise onto officials. LSN also raises certain points relating to whether these are strict liability or negligence based offences, which relate more to the Act than to these Regulations. My interpretation of the Act is that negligence is not the basis on which the Department is called upon to impose these fines, and that one is *prima facie* liable for them upon acting as stated in section 50 (1) of the Act, which makes no mention of negligence, while sub-sections (2)and (3) mention it. However, I believe that this does not necessarily make a "no fault" liability, but merely a *prima facie* liability case, which means that the burden lies with the person concerned to prove that there were justifying or exculpatory circumstances which eliminate culpability. Both regulations 36(4) and section 31(2)(d) may be invoked to plea lack of culpability as well as any relevant provision of common law and other statutes. I trust that this clarification together with regulation 47(5) may address the concern expressed by the IAB in this respect.

122.
Sub-regulation 48(1) of the Immigration Regulations adopted in terms of section 52 of the Act, which came into force on April 7, 2003 has produced an effect which remains in force by virtue of regulation 48(1), and which is worth hereby recording as, in terms of section 52(2) of the Act, it has maintained sub-regulations (1)(a), (b)(i) and (2) of regulation 30 of the Aliens Control Act into force and effect. Such sub-regulation read

> "The Regulations promulgated under the Aliens Control Act, 1991 (Act no 96 of 1991) are hereby repealed, except for sub-regulations (1)(a), (b)(i) and (2) of regulation 30."

123.
The IAB requested that bank, commercial or insurance guarantees be made available immediately, but the Department is not currently ready to handle them and is geared only to return cash rather than release guarantees or request their extension upon expiry. Commercial guarantees may include those provided by approved bonding companies.

124.
PWC argues that this provision forces an application lodged under the Aliens Control Act [ACA] to be dealt with in terms of the Act, which would be a case of retrospective legislation. However, that is not the case. By its coming into force, the Act has established a new parameter. The ACA can no longer be applied, because it is repealed. Therefore, all applications in terms of the ACA could have been summarily rejected. In order to avoid such a result, and entirely at the option of the applicant, this provision deems applications under the ACA as having been lodged under the Act, giving the applicant the maximum latitude to gain benefits under either of the Acts. However, the limit is in that one cannot gain what was allowed under the ACA, which cannot be provided under the Act, for that would be tantamount to applying a repealed law.

125.
The IAB suggests that I prescribe that all temporary or permanent residence permits be issued with an official computer generated bar code, an official stamp, the date of issue, the full name and persal number of the issuing official and other information. However, I am advised by the Department that at this juncture this proposal is not practical. For instance, a visa is computer generated but only gets stamped at the port of entry where it becomes a visitor's permit, and the extension of a temporary residence permit does not have a bar code as the foreigner retains his or her original permit or visa's bar code number issued when he or she entered the Republic.

126.
PWC requests the deletion of Annexure 58 because it objects to the provision of the Act relating to the delegation of powers from a chartered accountant to another accountant recognized under any other law. However, such objection is directed to the Act and not to the Regulations, and, as such, is misplaced. Going in the opposite direction, the IAB criticises the Act for not including CFA and in CMA in the definition of chartered accountants, which may be problematic. PWC also requests forms for each certification to be performed by chartered accountants in terms of the Act and these Regulations. However, I prefer to rely on the capacity of chartered accountants to read the relevant provisions of the Act and these Regulations, and incorporate them in their certifications in language, or by reference, so as to simplify paper work on all sides. If future experience proves that this approach does not simplify and expedite matters, or that chartered accountants need additional guidance, I will prescribe the relevant forms.

127.
This provision was set out in the draft regulations as a proviso to regulation 28(4)(a)(ii) qualifying the certification for chartered accountants in respect of quota work permits. It now qualifies all certifications from chartered accountants. HGA argues that, because to a certain extent chartered accountants may rely on information submitted by clients, the Department could very well accept the information provided by the applicants who should be able to corroborate it by means of their own affidavit. However, in such a case the Department would need to evaluate the credibility of such an affidavit and could not be expected to take information at face value. This provision requires the chartered accountant to be satisfied on the basis of his or account's expertise and skills that the information on which he or she relies is in fact credible, reliable and sufficiently accurate. The test which one would apply is that of professional good faith and due diligence that reflects the type of certifications which chartered accountants perform in other fields of their profession. This screening of information and professional assessment enables the Department to give credence to the information received and avoid having to evaluate it on an independent basis or anew.

128.
The IAB objects to the implication that a blood or radiological test should normally be taken. However, this is not a necessary implication. It may be the case that in the overwhelming number of cases the assessment of doctors is that blood and biological tests need not to be taken. However, since this has been the practice up until now, we

need to focus the attention on medical doctors on whether such or other tests should indeed be performed on the basis of applicable and scientific medical parameters.

129.
The IAB is concerned that the requirements set out in this sub-regulation make the envisaged police certificate unobtainable in certain countries of the world. However, the sub-regulation is very clear that this information is required only when available and capable of being routinely obtained. I fail to understand what the problem is.

130.
It is recorded that the corresponding provision in the Immigration Regulations made in terms of section 52 of the Act, indicated March 12, 2003 as the commencement date. However, such regulations came into force and effect at 18h00 of April 7, 2003 because of the suspensive effect of a court order.

131.
The Immigration Regulations I made in terms of section 52 of the Act only made reference to item 2(2) on the understanding that, by virtue of item 3, items 1(b) where reference is made to the Appeal Refugee Board and 2(3) cannot come into force until section 37 of the Act is brought into force. For clarity sake I have now made explicit what was implicit.

132.
The fact that most of the requirements set out in this column are to the satisfaction of the Department gives the Department the power of not requiring proof when it is satisfied that the applicant meets such requirement. In certain circumstances they may be superfluous, as in the case of routing applications. Therefore, I cannot accept the IAB's suggestion to delete this qualification.

133.
The IAB suggests that there is no justification for this requirement which therefore ought to be deleted. However, one needs to differentiate between long-term and indefinite stay. Extended visitor's permits are for people who intend to go back to their country of origin even after a lengthy period in the Republic. Therefore, this requirement is provided to give substance to the intention to return as this remains a temporary stay, rather than indefinite or permanent one, and is part of what an applicant needs to prove to satisfy the three requirements which are (a) length of stay, (b) purpose of stay and (c) available financial means for the intended stay.

134.
The applicability of requirements needs to be assessed under the circumstances and each requirement will need to be imposed only if the grounds to do so subsist also in respect of underlying discretionary evaluations. The fact that a requirement could apply does not make it necessary for it to apply. For instance, in theory the repatriation guarantees contemplated in item 1 column 4(e) could be applied in any case, but they are applicable only in a few cases where the Department in its discretion deems it advisable to request them, as the other the requirements for a long-term permit, such as the chartered accountant's proof of financial means, would satisfy otherwise the need to guarantee the availability of the financial means necessary to depart.

135.
The IAB suggests that a form be introduced for the medical certificate. However, I do not consider it necessary because medical doctors are trained to routinely issue certificates of good health.

136.
I wish to clarify that it is obvious that requirements (a) to (d) and (n) and (o) apply in respect of all applicants, while requirements (e) to (m) only apply when the relevant relationship of kinship is relevant to the application. In this as well as in any other contents of these Regulations, the birth certificate needs not to be a full one, unless it is used to aver a parental or spousal relationship.

137.
The IAB considers this amount to be arbitrary and excessive. In its research and experience, the Department has indicated that this amount is adequate to avoid abuse and to have a properly regulated system of migration control, taking into account that this criterion applies for a long-term stay, when other criteria do not apply.

138.
The IAB takes exception to this regulation making reference to the requirements under Item 9(1) only if "applicable" suggesting that this may lead to confusion and that the correct requirement should be properly spelt out. However, the requirements are applicable depending on the individual circumstances.

139.
The IAB suggests that this requirement be deleted because it is incorporated in Annexure 53. Even though that is the case, when possible, I prefer to have substantive requirements within the body of the regulations.

140.
The IAB makes reference to the need to supply a form for the radiological report. As I indicated in an earlier Endnote, I do not see the need for it because what counts is the certification from the medical doctor, which is a routine certification.

141.
The date of commencement of the status of Richards Bay or Mafikeng as ports of entry needs to be determined at a later time pending interdepartmental consultations which I request to take place within the IAB as soon as possible and a possible submission to Cabinet to finalize the matter and deal with logistical issues.

142.
Unless otherwise stated, the exemptions set out in this Schedule apply to all types of passports, including diplomatic and service ones.

143.
Consistently with section 12 of the Act, diplomatic permits may only be issue when the purpose of the visit is one contemplated in section 12 of the Act and not when the holder of a diplomatic passport uses such passport to enter for a different purpose, such as tourism or business, including government business not covered by the provisions of section 12 of the Act, in which case a visitor's permit shall apply, as would be the case in respect of other purposes which trigger another type of permit.

144.
CFI requested to be exempted from registration as an immigration practitioner because it is a not-for-gain organisation. However, because the purpose of this provision is to protect consumers, in this and in any other field of trade, the legal forum of the service or product provider cannot be relevant. The services of CFI and similar companies merely relating to the relocation of foreigners and providing them with forms of assistance other than the acquisition of benefits under the Act, do not fall within the scope of this Schedule. I appreciate the charitable nature of CFI. However, lawyers and physicians working for charitable organisations are required to meet the standards of registration of their profession and I do not see my way clear to treat immigration practitioners doing charitable work on a different basis. If CFI or other entities limit their activities to providing information to foreigners without representing them in respect of procedures in terms of the Act, registration in terms of this Schedule is not required.

145.
CKA argues that the reference to regional society is confusing because there may be more than one. However, this is a criterion directing my discretion and circumscribing a pool of people from which I can make appointments. Therefore any regional society will fall within the purview of this provision.

146.
IRU argues that the establishment of an association of this type is unconstitutional, without specifying the basis for such a claim. All professions are somehow regulated in the interest of consumers, and self regulation by the profession is constitutionally as acceptable as regulation by government. In this case a mixed system has been used in which the self regulation of a profession is monitored by government as certain powers are retained by government in what remains a partnership model. IRU misread this provision as providing that only lawyers may preside over an association, when in fact the provision refers to three immigration practitioners; nonetheless, I clarified the text. CKA argues that if immigration practitioners are a self regulatory organization, the Association should be able to make its regulations and Schedule F should be deleted. It could be as CKA suggests but does not need to be so, as it is a policy matter to decide the degree of self regulation or, conversely, the degree to which I devolve my regulation-making power to the Association. In my opinion the approach employed in Schedule F is balanced, especially in light of the initial formative stage of this newly regulated profession. CKA suggests that also lawyers and advocates practising immigration law should be members of an Association. In my opinion the Act prevents such an option and I would consider such option to be undesirable from a policy viewpoint as lawyers and advocates have their own self regulating mechanisms which are all encompassing, while, with a few exceptions, there are no requirements limiting the practice of a lawyer or advocate to all fields of law.

147.
CKA argues that 50 is too high a number and that rather the number of 7 should be used. However, it is important to avoid the excessive fragmentation of Associations. Provision has been made for more than one Association in order to enable dissatisfied practitioners not to be captured in a mandatory membership and to allow potential competition. However, each Association is to be viable and have sufficient support, otherwise Associations may fail the purpose of relieving the Department of the burden of regulating the profession, as the Department will have to regulate the Associations. The purpose of the potential plurality of Associations is not that of creating an Association in each region and I will be conservative in allowing more than two or three Associations in the absence of a clear showing of a functional need for them. CKA also suggests that Associations should be established ahead of need of membership, while the policy entrenched here is that of creating a new Association only when there is a proven need for it. Competing Associations may not necessarily operate on distinct territorial areas but may compete on a national basis. CKA also argues that I, as the Minister, would not be capable of assessing the need for a new Association. I beg to differ as any Minister can be advised by the IAB, the Department and the representations of those intending to form the new Association. CKA also wonders whether the regulations regard Immigration Practitioners as a profession and calls for a preamble to clarify that. I find that it is not necessary as the purpose of the regulations is indeed that of establishing a well regulated profession and, as I have clarified in these Endnotes, the Department is mandated to increasingly rely on the contribution which the professional Immigration Practitioners can and must make towards the development and administration of migration control.

148.
CKA fears that the competition between Associations may lead the Minister to erroneously utilise his power. However, this is not a free power and its exercise can be challenged in review proceedings in a court of law.

149.
CKA suggested a textual reference to the relevant SETA. However, I do not consider it appropriate as each qualifying employer has the right, but not the duty to seek the opportunities offered by its SETA and it is not for me to determine whether an Association would qualify for such opportunities or would wish to take advantage of them.

150.
CKA requested that the power of attorney be exempted from the R2 revenue stamp. However, such a requirement is not imposed by these Regulations and therefore I do not have the power to waive it.

151.
CKA suggests that an applicant should be able to lodge an application wherever he or she prefers. However, as I indicated elsewhere in these Endnotes, there is a connection between the place where the foreigner is to work or reside, and the Department's permit issuing office, for we intend to have continuity between the issuance of permits and the monitoring of compliance with their terms and conditions through inspections and possible

enforcement actions including deportation. For the same reason the territorial connection must be between the applicant and the Department's office, and not in respect of where the immigration practitioner is located, as CKA suggests, for an immigration practitioner may no longer represent his or her client after the issuance of a permit and for the entire length of a permit period.

152.
PWC argues that this age limit is a constitutionally impermissible discrimination. However, section 9(3) of the Constitution relates to unfair discrimination while section 9(4) refers the matter to legislation. In light of these provisions, having considered the relevant interest to protect consumers and similar provisions in national and foreign legislation, I am satisfied that there is no unfair discrimination, also considering the legal age limit set out herein.

153.
The IAB considered whether immigration practitioners should qualify only if citizens or whether they could be residents with a certain amount of years of qualifying residence, or whether they should merely be residents. I am advised that "various members of the Board believe that a resident, with one or two years of residence, should qualify, but there are dissenting views", and that some prefer a resident without any residence time qualification while others would restrict the job to citizens. In light of Section 25(1) of the Act, it is obvious that I cannot restrict such position to citizens and that a resident has all the rights of a citizen unless otherwise provided for in law. I also do not feel that I have the power to create an intermediary classification between residents and citizens, i.e. residents seasoned by a certain length of residence within the Republic.

154.
PWC argues that this provision should indicate that the police clearance needs to be delivered within 6 months of registration as the process of obtaining one may take several months. However, the feedback I have thus far received from the Association indicates that compliance under this provision has not been a problem.

155.
As CKA suggests, this requirement can be satisfied by a qualifying statement in this regard in the application form for registration as an immigration practitioner or by such qualifying statement being recorded in a signed copy of the code of conduct.

156.
CKA requested that the certificate be issued "immediately" . In terms of this provision it must be issued "upon registration" which has a similar value of requesting that it be issued without any intervening delays or further ado.

157.
CKA suggests that it is not necessary to have such an offence because by reference to the official list of registered practitioners an office of the Department can easily identify whether a practitioner is still registered. However, the certificate is the primary form of identification of a practitioner. Unless the Department has a reason to doubt the legitimacy of a practitioner, it is unlikely to go beyond verifying that someone claiming to be a practitioner does in fact have the relevant certificate.

158.
CKA asks when the application for an extension ought to be submitted. In terms of this provision such application has to be submitted while the certificate is still valid.

159.
IRU questions the purpose of this insurance arguing that in case of a law suit the registration of the immigration practitioner may be withdrawn. IRU concedes that most immigration practitioners are one person businesses and, as such, they may not be able to pay for damages they may cause to their clients, in which case the fact that their registration has been withdrawn will be of little satisfaction to the injured party. PWC argues that the minimum cover of R 500 000 is too high, however, I find it to be proportional to the type of bad scenario case damages flowing from Immigration Practitioner's negligence, especially in respect of corporate permit applications.

160.
As CKA suggests, nothing prevents that compliance with (a) and (b) takes place simultaneously.

161.
CKA argues that agents who registered under the Aliens Control Act ought to be exempted for 2 years. I see no reason to do so. The law has changed and new criteria have been established both for the profession as well as in respect of the rules governing immigration control. Consumer protection demands that all those practising in the field are familiar with and comply with such criteria. Moreover the Act was promulgated on May 31, 2002 and came into force on April 7, 2003, which gave plenty of notice to all relevant agents of the need to bring themselves in compliance with the new requirements. It is also worth recording that the Immigration Regulations made in terms of section 52 of the Act were first published in the Gazette of November 22, 2002. A commitment to the Code of Conduct previously made in terms of the Immigration Regulations which I made in terms of section 52 of the Act satisfies the relevant requirement of this provision.

162.
CKA holds that section 46(1) of the Act would allow Immigration Practitioners to have the right of appearance before Immigration Courts and requests that the matter be addressed in the Schedule. However, section 37 of the Act has not come into force and it would be premature for me to address this matter and voice my doubt on the correctness on CKA's interpretation of section 46 of the Act.

163.
CKA objects to this provision on the basis that Immigration Practitioners and the Department's officials work closely together and are bound to develop close relationships. However, what is addressed here is a "special or privileged relationship". Furthermore, it may be the case that an immigration practitioner has such a relationship with one or more of the Department's officials, which this provision does not prohibit. What is prohibited is to advertise or otherwise portray that such relationship exists as a way of marketing or promoting oneself.

164.
CKA is incorrect in stating that this provision would authorise an Association to set uniform fees. The Association is to determine what is reasonable under the circumstances taking into account that price differentiation amongst Immigration Practitioners is essential to promote competition, quality of services and reflect market conditions and client's expectations. CKA is correct in stating that at times it may not be possible to identify upfront the cost of a service, which accounts for the fact that this provision refers to estimates which, as such, are subject to assumptions which may change over time. It is also possible for estimates to be made with reference to certain conditions or hourly rates.

165.
GHS made a request that fees for permanent residents be lowered for applicants for temporary residence who have previously shown their intent to stay in South Africa for a period longer than five years. I fail to understand the rationale of this comment as temporary and permanent residence are somehow separate and I don't see how one could lower fees for permanent residents in light of an intention expressed five years prior to application.

166.
The fee is payable in Rands in the Republic even though the immigration practitioner may be residing and operating his or her practice abroad. The fee relates to the administration of tests within the Republic. Should an Association make test facilities available abroad, it will need to enter into voluntary agreements with those intending to use them to recover the costs of testing abroad.

167.
A number of concerns were raised by the IAB in respect of some of the Annexure, which, when they have not been accommodated, for simplicity's sake I wish to address in this single Endnote. In respect of Annexure 2, the IAB reiterates its concern expressed in relation of Regulation 19(3) which I have addressed in an Endnote relating thereto. The IAB also indicates that the requirement of proof of booking of airline tickets is inconsistent with the Regulations and item 1 of Annexure A. I do not believe so because Annexure A of item 1 does in fact require *inter*

alia an air ticket and therefore, when applicable, proof of booking is consistent therewith. Correctly the IAB indicates that item A of Annexure 4 does not list all the purposes of a visitor's permit. However, it would not be practical to do so and therefore the listing is more evocative than descriptive. The IAB questions the requirements to provide information about one's own whereabouts emerging from the language of Annexure 6 and 7 which I deem to be necessary as part of a good faith intention to participate in the process set out in section 8 of the Act. The procedure followed in practice is that Annexure 6 and 7 are served on the foreigners in duplicate. The foreigner is required to sign the duplicate and indicate his or her decision regarding whether he or she wishes to make representations or not. Should he or she wish to make representations at that time, this must be attached to the original copy when it is submitted after the expiry of ten days. Nonetheless, the IAB has requested me to make provision for representations to be made at a later time but within the ten days period, which I have done by amending this Item of the "acknowledgment" accordingly, both in respect of Annexure 6 and 7. In respect of Annexure 13 the IAB suggests that reference should be made to regulation 22, which is not necessary as regulation 22 provides for but one of the many permits covered by this Annexure, and that the list is not exhaustive, when in fact it is. The IAB also erroneously suggests that this permit is not handed to the applicant, when in fact it is. The IAB suggests the deletion of item "important (iv)" of Annexure 4, which however is necessary because the foreigners concerned do not have a visitor's permit application and their visa will, on admission, become a visitor's permit. In respect of Annexure 14, 16 and 24, the IAB suggests that the requirement of proof of availability of funds to be transferred from abroad, "if applicable" be scrapped because it is covered in the certification of the chartered accountant. This requirement only applies when the matter is not covered by the certification of the chartered accountant. If it is, it will be "inapplicable". I invite the IAB to monitor the implementation of this directive: if it is not followed or creates uncertainties, I shall promote the amendment of these Annexure to scrap this requirement. The IAB objects to items 12.7.7 and 12.7.9 of Annexure 14, which, however, seem to me to flow from section 19(2)(a) of the Act and regulation 28(5). The IAB objects to the use of the word "sponsor" in item 10.18.1 of Annexure 16. However, such word is in regulation 27(2)(a) and is required to highlight that a relative has access to a relative's permit because of the interest in the matter and the request of the citizen or resident. The IAB objects to item 4.6 of Annexure 21 suggesting that it has nothing to do with interstate agreements. However, the purpose of this item is merely to determine whether a waiver is sought where applicable. The IAB also suggests that the waiver of section 21(2)(d) be provided in items 3.1 and 3.2 of Annexure 21, which is instead catered for in item 5.1, which I made clearer also to clarify the purpose of any possible but not required consultation and the fact that such consultation must be promoted by the applicant, so that the Department may have a complete application before it without needing to consult any other entity in this respect when processing the application. The same applies in respect of items 5.2 and 5.3. The IAB should appreciate that this procedure is designed to avoid delays in the hope that the applicant may obtain what is requires from other organs of State at least as efficiently, effectively and promptly as an official of the Department, thereby eliminating the possibility of internal delays or inaction. The IAB suggests that item 4.5 of Annexure 21 indicates a "future entitlement" to interstate agreements, when in fact it refers only to existing ones. I have clarified that the proof of funds coming from abroad contemplated in item 14(a) of Annexure 24 is required only when applicable, which is when not covered by the chartered accountant's certification. The IAB queries the need to refer to a contract of employment in Annexure 53 in cases other than workers covered by an interstate agreement. This requirement is to avoid the use of Annexure 53 to enter or stay in the Republic before the foreigner is contractually bound to the employer.

168.
In concluding this regulation-making process, I wish to highlight some of its unique characteristics. To the best of my knowledge, this has been the first time in our Republic that regulations have been made on the basis of legally necessitated public participation, and in a format which restricts the discretion of the Minister to the point that he or she cannot disregard public comments or the advice of the Board in a manner which is arbitrary or capricious. This is a major step forward in consolidating our participatory democracy. Making regulations in this fashion is undoubtedly more difficult, but I hope that the quality of the product may justify the effort. It is worth noting that in justifying why certain suggestions have not been accommodated it must also be kept in mind that the field of migration control is one which will never be able to satisfy everyone and is likely to displease more people than those it pleases. Migration control is one of the issues which will need to receive in this century global policy attention so as to create a comprehensive conceptual framework and a general policy direction at the international level in the same way as in the 19th and 20th centuries mankind worked together to develop a general framework for human rights' protection. In the age of globalization the last prerogative of the national state to bar entry to

people who are not its citizens is coming under question. By the same token we live in an age of heightened security concerns, which seems to push backward the frontiers of freedom and liberalism which have so difficultly been acquired during the 19th and 20th centuries. All these are difficult considerations which require to be balanced within the field of migration control both domestically and internationally. The Act has chosen a liberal approach to migration control, determining that under regulated conditions we shall open the front door of our Republic to immigrants, while closing the back door to illegal immigration. A more liberal policy which opens our country's door to selected, beneficial and needed foreigners who may come to South Africa on a temporary or permanent basis is indeed a fundamental policy choice which highlights our country's own confidence in its future success as well as the world-wide emerging knowledge and understanding of the benefits of immigration, even in countries in which there is a high level of unemployment and great social and economic problems, such as ours. In this respect I wish to record a portion of the IAB's advice which reads "a number of surveys and analyses, such as the research of the National Academy of Science in the United States in 1997 and various analyses in the European Union have concluded that on average every foreign immigrant creates more jobs than he or she occupies. This in particular applies to migrants who bring capital and business skills where a factor of at least 4 jobs created for each migrant is a likely scenario". Therefore, I adopted these Regulations with a view to implementing both the letter and the spirit of the Act which meant to create in South Africa a more liberal system of migration control, on the premises that properly regulated migration is indeed beneficial to the social make-up of our country and for its medium and long-term economic growth. I wish to thank all those who provided inputs and contributions in this regulation-making process and invite them to continue applying their minds to the relevant issues and monitor the implementation of the Act and these Regulations, for in a field like migration control policy formulation must remain an ongoing process.

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