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STATE PRESIDENT'S OFFICE

No. 690

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

No. 13 of 2011: Immigration Amendment Act, 2011.



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GENERAL EXPLANATORY NOTE:

- [Words in bold type in square brackets indicate omissions from existing enactments.
- Words underlined with a solid line indicate insertions in existing enactments.

(English text signed by the President)
(Assented to 21 August 2011)

ACT

To amend the Immigration Act, 2002, so as to substitute certain words of the Preamble to the Act; to delete, insert or substitute certain definitions; to revise provisions relating to the Immigration Advisory Board; to revise provisions relating to the making of regulations; to provide for the designation of ports of entry; to revise provisions relating to visas for temporary sojourn in the Republic and for the procedures with regard thereto; to provide for the mandatory transmission and use of information on advance passenger processing; to provide for the transmission of passenger name record information; to revise provisions relating to permanent residence; to revise penal provisions; to correct certain important technical aspects in the text of the Act; and to provide for matters connected therewith.

BE IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

Amendment of Preamble to Act 13 of 2002, as substituted by section 1 of Act 19 of 2004

1. The Preamble to the Immigration Act, 2002 (Act No. 13 of 2002) (hereinafter referred to as the principal Act), is hereby amended by the substitution for paragraphs (a) and (c) of the following paragraphs respectively:

- “(a) **[temporary]** visas and permanent residence permits are issued as expeditiously as possible and on the basis of simplified procedures and objective, predictable and reasonable requirements and criteria, and without consuming excessive administrative capacity;
- (c) interdepartmental coordination and public consultations enrich the **[functions]** management of immigration **[control]**”.

Amendment of section 1 of Act 13 of 2002, as amended by section 2 of Act 19 of 2004 and section 1 of Act 3 of 2007

2. Section 1 of the principal Act is hereby amended—

- (a) by the insertion in subsection (1) after the definition of “admission” of the following definition: 5
“**‘advance passenger processing’** means the pre-clearance of persons, in the prescribed manner, prior to boarding conveyances by means of a boarding advice issued to owners or persons in charge of conveyances;”;
- (b) by the substitution in subsection (1) for the definition of “corporate applicant” of the following definition: 10
“**‘corporate applicant’** means a juristic person established under the laws of the Republic **[or of a foreign country which conducts business, not-for-gain, agricultural or commercial activities within the Republic and]** which applies for a corporate **[permit]** visa referred to in section 21;”;
- (c) by the deletion in subsection (1) of the definition of “customary union”; 15
- (d) by the substitution in subsection (1) for the definition of “immigration officer” of the following definition: 20
“**‘immigration officer’** means an officer appointed **[in terms of section 33]** by the Director-General to perform the functions of either the permitting office, port of entry or inspectorate as contemplated in this Act;”;
- (e) by the substitution in subsection (1) for the definition of “marriage” of the following definition: 25
“**‘marriage’** means—
(a) a marriage concluded in terms of—
(i) the Marriage Act, 1961 (Act No. 25 of 1961); or
(ii) the Recognition of Customary Marriages Act, 1998 (Act No. 120 of 1998); **[or]**
(b) **[a legal marriage under the laws of a foreign country]** a civil union concluded in terms of the Civil Union Act, 2006 (Act No. 17 of 2006); or
(c) a marriage concluded in terms of the laws of a foreign country;”;
- (f) by the insertion in subsection (1) after the definition of “owner” of the following definition: 35
“**‘passenger name record’** means the record of the data of a person as contemplated in section 35(3)(a) created by the owner or person in charge of a conveyance or his or her authorised agents for each journey booked by or on behalf of any person;”;
- (g) by the substitution in subsection (1) for the definition of “passport” of the following definition: 40
“**‘passport’** means any passport or travel document containing the prescribed information and characteristics issued—
(a) under the South African Passports and Travel Documents Act, 1994 (Act No. 4 of 1994); 45
(b) on behalf of a foreign state recognised by the Government of the Republic to a person who is not a South African citizen;
(c) on behalf of any international organisation as prescribed, including regional or sub-regional organisations, to a person who is not a South African citizen; or 50
any other document approved by the Minister and issued under special circumstances to a person who cannot obtain a document contemplated in paragraphs (a) to (c);”;

- (h) by the substitution in subsection (1) for the definition of “port of entry” of the following definition:
“**‘port of entry’** means a place designated as such by the Minister **[where all persons have to report before they may enter, sojourn or remain within, or depart from the Republic]** in terms of section 9A;”;
- (i) by the insertion after the definition of “port of entry” of the following definition:
“**‘port of entry visa’** means the authority to travel from a port of entry of another country to any port of entry of the Republic for the purposes of admission into the Republic, as contemplated in section 10A;”;
- (j) by the deletion of the definition of “Republic”;
- (k) by the substitution in subsection (1) in the definition of “spouse” for paragraph (a) of the following paragraph:
“(a) a marriage **[, or a customary union]** as defined in this Act; or;”;
- (l) by the substitution in subsection (1) for the definition of “status” of the following definition:
“**‘status’** means the status of the person as determined by the relevant visa or permanent **[or temporary]** residence permit granted to a person in terms of this Act;”;
- (m) by the deletion of the definition of “temporary residence permit”; and
- (n) by the substitution in subsection (1) for the definition of “visa” of the following definition:
“**‘visa’** means the authority to temporarily sojourn in the Republic for purposes of—
(a) transit through the Republic as contemplated in section 10B;
(b) a visit as contemplated in section 11;
(c) study as contemplated in section 13;
(d) conducting activities in the Republic in terms of an international agreement to which the Republic is a party as contemplated in section 14;
(e) establishing or investing in a business as contemplated in section 15;
(f) working as a crew member of a conveyance in the Republic as contemplated in section 16;
(g) obtaining medical treatment as contemplated in section 17;
(h) staying with a relative as contemplated in section 18;
(i) working as contemplated in section 19 or 21;
(j) retirement as contemplated in section 20;
(k) an exchange programme as contemplated in section 22; or
(l) applying for asylum as contemplated in section 23, whichever is applicable in the circumstances;”.

Amendment of section 4 of Act 13 of 2002, as amended by section 5 of Act 19 of 2004

3. Section 4 of the principal Act is hereby amended—

- (a) by the substitution for subsection (2) of the following subsection:
“(2) (a) The Board shall consist of—
- (i) (aa) the Director-General;
(bb) the Head of the Immigration Services Branch of the Department;
- (ii) any representative, at least equivalent to the rank of Deputy Director-General, from any department or organ of state whom the Minister considers relevant;
- (iii) a person representing organised business;
- (iv) a person representing organised labour; and

- (v) up to five individual persons appointed by the Minister in the prescribed manner on the basis of their knowledge, experience and involvement pertaining to immigration law, control, adjudication or enforcement.
- (b) The Minister shall designate from the members of the Board a Chairperson and Deputy Chairperson of the Board."; and 5
- (b) by the substitution in subsection (4) for the words preceding paragraph (a) of the following words:
- "A member of the Board referred to in subsection (2)(a) [(iv), (v) and (vi)] (iii), (iv) and (v) shall—". 10

Amendment of section 7 of Act 13 of 2002, as substituted by section 8 of Act 19 of 2004

4. Section 7 of the principal Act is hereby amended—

- (a) by the substitution in subsection (1) for paragraph (e) of the following paragraph: 15
- "(e) [the permits] a port of entry visa, visas, permanent residence permits and the certificates which may be issued under this Act, the requirements for the issuing of [permits] a port of entry visa, visas, permanent residence permits and certificates and [the] terms and conditions to which such [permits] port of entry visa, visas, permanent residence permits or certificates may be subjected, and the circumstances under which such [permits] a port of entry visa, visas, permanent residence permits or certificates may be cancelled or withdrawn;"; 20
- (b) by the substitution in subsection (1) for paragraph (g) of the following paragraph: 25
- "(g) the forms of warrants, permanent residence permits, a port of entry visa, visas, certificates or other documents to be issued or used, or of declarations to be made, or of registers to be kept, for the purposes of this Act, and the particulars to be provided on or inserted in any such document, declaration or register;" 30
- (c) by the substitution in subsection (1) for paragraph (i) of the following paragraph: 35
- "(i) the fees that may be charged in respect of the application for and issuing of a port of entry visa, visas, permanent residence permits and certificates and other services rendered in terms of this Act, including advance passenger processing and passenger name record information transmission;" 40
- (d) by the deletion in subsection (1) of paragraph (k);
- (e) by the substitution in subsection (1) for paragraph (n) of the following paragraph: 45
- "(n) the circumstances whereunder and the manner in which a penalty shall be incurred by and recovered from the owner, agent, charterer or person in [control] charge of a conveyance and who conveyed a foreigner contemplated in section 35[(7)](9) to the Republic;" and 50
- (f) by the substitution for subsection (2) of the following subsection:
- "(2) Different regulations may be made under subsection (1)(c) in respect of different ports of entry, and the forms of warrants, permanent residence permits, a port of entry visa, visas, certificates, documents, declarations or registers prescribed under subsection (1)(g) may differ in respect of different categories of persons." 55

Amendment of section 9 of Act 13 of 2002, as substituted by section 10 of Act 19 of 2004

5. Section 9 of the principal Act is hereby amended—

- (a) by the substitution for subsection (3) of the following subsection: 55