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REPUBLIC OF SOUTH AFRICA
IRIPHABLIKI YENINGIZIMU AFRIKA

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THE PRESIDENCY

No. 766 31 May 2002

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

No. 13 of 2002: Immigration Act, 2002.

LIHHOVISI LEMENGAMELI

No. 766 31 Meyi 2002

Ngaloku kwentiwa satiso sekutsi uMengameli uwuvumile uwuvumile lomTsetfo lolandzelako, lekungumTsetfo lokhi-shwako lapha kutsi watiwe ngumphakatsi wonkhe:—

No. 13 wa 2002: UmTsetfo wetiFiki-namtfwalo, 2002.



AIDS HELPLINE: 0800-123-22 Prevention is the cure

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 30 May 2002.)

ACT

To provide for the regulation of *admission* of persons to, their residence in, and their *departure* from the *Republic*; and for matters connected therewith.

PREAMBLE

In providing for the regulation of *admission* of foreigners to, their residence in, and their *departure* from the *Republic* and for matters connected therewith, the Immigration Act aims at setting in place a new system of immigration control which ensures that—

- (a) temporary 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, without consuming excessive administrative capacity;
- (b) security considerations are fully satisfied and the State retains control on the immigration of foreigners to the *Republic*;
- (c) interdepartmental coordination constantly enriches the functions of immigration control and that a constant flow of public inputs is present in further stages of policy formulation, including regulation making;
- (d) the needs and aspirations of the age of globalization are respected and the provisions and the spirit of the General Agreement on Trade in Services is complied with;
- (e) *border* monitoring is strengthened to ensure that the *borders* of the *Republic* do not remain porous and illegal immigration through them may be effectively detected, reduced and deterred;
- (f) ports of entry are efficiently administered and managed;
- (g) immigration laws are efficiently and effectively enforced, deploying to this end significant administrative capacity of the *Department* of Home Affairs, thereby reducing the pull factors of illegal immigration;
- (h) the South African economy may have access at all times to the full measure of needed contributions by foreigners;

EMAGAMA EKUCHAZA NGALOKWETAYELEKILE:

[] Emagama lagcamile langekhatsi kwebakaki labasikwele akhombisa loko lokushiye kwangafakwa emitsetfweni leseyivele ikhona.

Emagama ladvwetjelwe ngemugca lohlangene akhombisa loko lokufakiwe emitsetfweni leseyivele ikhona.

(English text signed by the President.)
(Assented to 30 May 2002.)

UMSTETFO

Wekubonelela kuhambisa ngendlela kungeniswa kwebantfu, kuhlala kwabo kanye nekuphuma kwabo eRiphabliki; kanye netindzaba letihambelana naloko. Sandvulelo

Ngalesikhatsi ubonelela kungeniswa kwetichamuki, kuhlala kwato kanye nekuphuma kwato eRiphabliki kanye netindzaba letihambelana naloko, umTsetfo wetiFiknamtfwalo uhlose kutsi ufake luhlelo lolusha lwekuphatfwa kwetindzaba tetifikinamtfwalo lolucinisekisa kwekutsi—

- (a) timvume tekuhlala sikhathana kanye netekuhlala somphelane tikhishwa masinyane ngalokunekwenteka nekutsi loko kwentiwa ngekwesekela etinchubeni letentiwe taba malula kanye naletinetidzingakalo kanye nemibandzela lokungavuni muntfu, lokulindzelekile kanye nalokuvakalako, ngaphandle kwekutsatsa sikhatsi lesinyenti kakhulu salabo labenta lowo msebenti;
- (b) tidzingakalo tetekuphepha tenetiseka ngalokugcwele nekutsi uMbuso kusolo kungiwlo lophetse esandleni sawo tindzaba tetichamuki letitifikinamtfwalo lapha eRiphabliki;
- (c) kuhanjiswa kahle kwekubambisana emkhatsini wematiko lehlukelukene kuhlala ngaso sonkhe sikhatsi kwenta ncono kuphatfwa kwetindzaba tetifikinamtfwalo, nekutsi kuhlala kungena njalo imibono yemphakatsi ngalesikhatsi kuchutjekwa netigaba tekwenta tinchubomgomo letinye, kufake ekhatsi kwakhiwa kwetimiso;
- (d) tidzingo kanye naloko lokubukelelwe bantfu ngalesikhatsi sekudidiyeleka ndzawonye kwemave emhlaba kuyahlonishwa nekutsi tibonelelo tesiVumelwano leseTayelekile ngekuHweba ngemiSebenti siyalandzelwa;
- (e) kucashelwa kwemincele kuyaciniswa kuze kucinisekise kutsi imincele yeRiphabliki ayihlali ivuta nekutsi tifikinamtfwalo letingekho emtsetfweni letingena kuyo tiyatfolwa, tiyancishiswa futsi tiyavinjelwa ngalokushay'emhlohlweni;
- (f) tikhumulo tekungena eveni tiphatfwa futsi tihanjiswa ngalokwenetisako;
- (g) imitsetfo yetetifikinamtfwalo isetjentiswa ngalokwenetisako nangalokushay'emhlohlweni, kutsi futfunyelwa bantfu labenele labawati kahle umsebenti wekuphatsa beliTiko letaseKhaya kutsi bente lomsebenti, ngaleyo ndlela kwehliswe kudlanga kwetifikinamtfwalo letingekho emtsetfweni;
- (h) umnotfo welaseNingizimu Afrika uba nako kufinyelela ngalokuphelele ngaso sonkhe sikhatsi ekutfoleni emakhono ladzingekako tichamuki letinawo;

- (i) the contribution of foreigners in the South African labour market does not adversely impact on existing labour standards and the rights and expectations of South African workers;
- (j) a policy connection is maintained between foreigners working in South Africa and the training of our nationals;
- (k) push factors of illegal immigration may be addressed in cooperation with other *Departments* and the *foreign states* concerned;
- (l) immigration control is performed within the highest applicable standards of human rights protection, and
- (m) xenophobia is prevented and countered both within Government and civil society.

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

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- (j) kuhlala kukhona kuchumana kutenchubomgomo emkhatsini wetichamuki letisebenta eNingizimu Afrika kanye nekuceceshwa kwebantfu bakuleli;
- (k) tindzaba letibangela kuba khona kwetifikinamtfwalo letingekho emtsetfweni kubukwana nato ngékubambisana nalamanye emaTiko kanye naleyo mibuso yakulamanye emave letsintsekako;
- (l) kuphatfwa kwetindzaba tetifikinamtfwalo kwentiwa ngekhatsi kwemazinga lasetulu kunawo onkhe lasetjentiswako ekuvikelweni kwemalungelo eluntfu; nekutsi
- (m) kutondza tichamuki kuyavinjelwa nafutsi kuliwa nako ngekhatsi kuHulumende kanye nasekuhlaleni kwebantfu emphakatsini.

WENTIWE WABA NGUMTSETFO yiPhalamende yeRiphabliki yaseNingizimu Afrika, ngalendlela lelandzelako:—

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Definitions and interpretation**1. (1) In this Act, unless the context indicates otherwise—**

- (i) “*admission*” means entering the *Republic* at a *port of entry* on the basis of the authority to do so validly granted by *this Act* or by an immigration officer in terms of *this Act*, and the verb “to admit” has a corresponding meaning; 5
- (ii) “*application*” means a request in the *prescribed* form which complies with the requirements and provides the information and documentation which may be *prescribed*;
- (iii) “*Board*” means the Immigration Advisory *Board* contemplated in section 4 of *this Act*; 10
- (iv) “*border*” means the national *borders* of the *Republic* and includes ports of entry, coastlines and the outer margin of territorial waters;
- (v) “*chartered accountant*” means a person referred to in section 1 of the Chartered Accountants Designation (Private) Act, 1993 (Act No. 67 of 1993) and includes an accountant, other than a *chartered accountant*, who is recognised as such under any law and who has been specifically or generally delegated by a *chartered accountant* to perform any or all activities contemplated in *this Act*; 15
- (vi) “*citizen*” has the meaning assigned thereto in the South African Citizenship Act, 1995 and “*citizenship*” has a corresponding meaning; 20
- (vii) “*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 referred to in section 21 of *this Act*;
- (viii) “*Court*” means an Immigration *Court* established in terms of section 37 of *this Act*; 25
- (ix) “*customary union*” means a conjugal relationship according to indigenous law and custom and which is recognised and documented as *prescribed*;
- (x) “*Department*” means the *Department* of Home Affairs;
- (xi) “*departure*” means exiting the *Republic* from a *port of entry* in compliance with *this Act* and the verb “to depart” has a corresponding meaning; 30
- (xii) “*deportation*” means the action or procedure aimed at causing an *illegal foreigner* to leave the *Republic* involuntarily, or under detention in terms of *this Act* and the verb “to deport” has a corresponding meaning;
- (xiii) “*Director-General*” means the *Director-General* of the *Department*; 35
- (xiv) “*employer*” includes the person contractually bound by the applicable employment contract as an *employer* or, in the case of a juristic person, its chief executive officer or the person to whom such officer has delegated the final responsibility in respect of personnel matters;
- (xv) “*foreign country*” means a country other than the *Republic*; 40
- (xvi) “*foreign state*” means the juristic entity governing a *foreign country*;
- (xvii) “*foreigner*” means an individual who is neither a *citizen* nor a *resident*, but is not an *illegal foreigner*;
- (xviii) “*illegal foreigner*” means an *foreigner* who is in the *Republic* in contravention of *this Act* and includes a *prohibited person*; 45
- (xix) “*immediate family*” means persons within the second step of *kinship*, where *marriage* or a spousal relationship is counted as one of such steps, but any common antecedent is not so counted;

Kuchazwa kwemagama kanye nekuhumusha

1. (1) KulomTsetfo, ngaphandle kwalapho simokusho sikhombisa ngaleny indlela—
 - (i) “emabala” kusho nobe nguliphi libhilidi, sakhiwo kumbe lithende kanye kanye nemhlaba leto tintfo letime kuwo, kanye nemhlaba loyincenye yemhlaba loisetjentiselwa mayelana naloko, futsi kufaka ekhatsi nobe ngumuphi umhlaba longenalo libhilidi, sakhiwo kumbe lithende kanye nanobe nguyiphi incola, intfo yekuhamba kumbe umkhumbi; 5
 - (ii) “iBhodi” kusho iBhodi yekweLuleka ngetiNdzaba tetiFikinamtfwalo lecatjangelwako esigabeni 4 salomTsetfo;
 - (iii) “imvume yekuhlala sikhashana” kusho imvume lekubhekiswe kuyo esigabeni 10 salomTsetfo; 10
 - (iv) “iNdvuna” kusho iNduna yetaseKhaya;
 - (v) “ipasipoti” kusho nobe nguyiphi ipasipoti kumbe tincwadzi tekuhamba lokucuketse imininingwane kanye netimphawu lokumisiwe loko lokukhishwe— 15
 - (a) ngaphansi kwemTsetfo wemaPasipoti kanye netiNcwadzi tekuHamba kwaseNingizimu Afrika, 1994;
 - (b) egameni lembuso wakulelinye live lowemukelekile kuHulumende weRiphabliki kwanikwa umuntu longesiso sakhamuti;
 - (c) egameni lanobe nguyiphi inhlangano yemave ngemave lemiswe ngesikhatsi nesikhatsi, kufake ekhatsi tinhlango tesifundza kumbe tesifundzancane, kwanikwa umuntu longesiso sakhamuti; kanye 20
 - (d) nanobe ngutiphi letinye tincwadzi letivunyelwe ngumCondzisijikelele ngemuva kwekubonisana neNdvuna futsi letikhishwe ngaphansi kwetimeko letingakavami tanikwa umuntu longeke akwati kutfoli tincwadzi lekubhekiswe kuto kupharagrafu (a) kuya ku (c); 25
 - (vi) “iRiphabliki” kusho iRiphabliki yaseNingizimu Afrika kanye nendzawo yayo;
 - (vii) “ivisa” kusho sitembu lesimisiwe lesishaywa ngalesikhatsi kwentiwa sicelo epasipotini lesebentako yesichamuki lesiniketa leso sichamuki ligunya lekuchubeka singene eRiphabliki siyetetfule embikwesisebenti sahumumende lesibukene netifikinamtfwalo kutsi sentiwe luhlolo lolumisiwe esikhumulweni sekungena eveni, ngenjongo yekutsi leso sichamuki singeniswe eRiphabliki ngemvume yekuhlala sikhashana legaguliwe, leyo mvume lengahociswa liTiko nobe nini ngembikwekutsi leso sichamuki singeniswe; 35
 - (viii) “kubuyiselwa kwemuntu eveni lakubo” kusho sento kumbe inhubo leconde kubangela kutsi sichamuki lesingekho emtsetfweni siphume eRiphabliki ngisho singafuni, kumbe ngemuva kwekuvalelwa ngekumisa kwalomTsetfo, futsi sento lesitsi “buyisela eveni lakubo” sisho intfo lehambisana naloko;
 - (ix) “kuhlanganiswa ngekwelisiko” kusho budlelwano bendvodza nemfati lobuhambisana nemtsetfo kanye nelisiko langekwendzabuko, nafutsi lobo budlelwano lobemukelwe futsi lobubhalwe phansi njengaloku kumisiwe; 40
 - (x) “kukhipha” kusho kukhipha ngenothi kuGazethi yaHulumende futsi, kufika ezingeni lekungahle kufinyelelwa kulo kanye nakuloko lokunekwenteka ngaphansi kwaletto timokusho, kusho kwendlulisela, ngekusebentisa liposi kumbe i-imeyili, tindzaba letimisiwe letifanele umphakatsi utati kumbe letibalulekile, kwendluliselwa kubalingani kumbe bantfu labatsintsekako labaticelele kutsi emagama abo afakwe etinhlwini tebantfu lekumele batfunyelelwe leto tindzaba, kumbe labo emagama abo asavele afakiwe kuleto tinhlulu, lekutinhlulu letitawugcinwa liTiko mayelana naleto tihloko tetindzaba lomTsetfo lodzinga kuto kutsi umphakatsi ube nelivi; 50
 - (xi) “kulelinye live” kusho live lelinye lelingesiyo iRiphabliki;
 - (xii) “kungeniswa” kusho kungena eRiphabliki esikhumulweni sekungena eveni lokususe lapho umuntu anikwe ligunya lekungena ngalokusemtsetfweni aliniketwa ngulomTsetfo kumbe sisebenti sahumumende lesibukene netifikinamtfwalo ngekumisa kwalomTsetfo, futsi sento lesitsi “ngenisa” sisho intfo lehambisana naloko; 55
 - (xiii) “kuphuma” kusho kuphuma kulase Riphabliki esikhumulweni sekungena eveni ngekutfobela lomTsetfo, futsi sento lesitsi “phuma” sisho intfo lehambisana naloko; 60
 - (xiv) “liKhoti” kusho liKhoti letiFikinamtfwalo lelisungulwe ngekumisa kwesigaba 37 salomTsetfo;

- (xx) “*immigration officer*” means an officer of the *Department*, or another person having the *prescribed* requirements, appointed as such from time to time by the *Department* and, for purposes of *this Act*, includes a person employed in, or contracted by, the *Department* who has been authorised by the *Department* to exercise certain powers and perform certain functions in the name of and on behalf of the *Department*; 5
- (xxi) “*marriage*” means a legally sanctioned conjugal relationship intended to be permanent and concluded under the laws of the *Republic*, or under the laws of a *foreign country* as *prescribed* from time to time, and includes a *customary union*; 10
- (xxii) “*master*” means the *master* of a *ship* and refers to the person who at any given time is in charge or command of a *ship*;
- (xxiii) “*Minister*” means the *Minister* of Home Affairs;
- (xxiv) “*organ of State*” has the meaning defined in section 239 of the Constitution;
- (xxv) “*owner*” means the *owner* of record and, in the case of a *ship*, it includes the charterer of the *ship* and any agent within the *Republic* of the *owner* or the charterer; 15
- (xxvi) “*passport*” means any *passport* or travel document containing the *prescribed* information and characteristics issued—
- (a) under the South African Passport and Travel Document Act, 1994; 20
- (b) on behalf of a *foreign state* recognised by the Government of the *Republic* to a person who is not a *citizen*;
- (c) on behalf of any international organisation *prescribed* from time to time, including regional or sub-regional ones, to a person who is not a *citizen*; and 25
- (d) any other document approved by the *Director-General* after consultation with the *Minister* and issued under special circumstances to a person who cannot obtain a document referred to in paragraphs (a) to (c);
- (xxvii) “*port of entry*” means a place *prescribed* from time to time where a *foreigner* has to report before he or she may move, sojourn or remain within, or enter the *Republic*; 30
- (xxviii) “*premises*” means any building, structure or tent together with the land on which it is situated and the adjoining land used in connection with it and includes any land without any building, structure or tent and any vehicle, conveyance, or *ship*; 35
- (xxix) “*prescribed*” means provided for by regulation, the verb “to prescribe” has a corresponding meaning and “*prescribed* from time to time” refers to section 7(2);
- (xxx) “*prohibited person*” means any person referred to in section 29 of *this Act*;
- (xxxi) “*publish*” means *publish* by notice in the *Government Gazette* and, to the extent possible and feasible under the circumstances, convey by mail or e-mail to parties or stakeholders who have requested their inclusion or have been included in mailing lists to be maintained by the *Department* in respect of subject matters in respect of which public input is called for by *this Act*, *prescribed*, advisable or expedient; 40
- (xxxii) “*regulations*” means general rules adopted by the *Minister* after consultation with the *Board* in terms of *this Act* and *published*; 45
- (xxxiii) “*Republic*” means the *Republic* of South Africa and its territory;

- (xv) “*liTiko*” kusho *liTiko* letaseKhaya;
- (xvi) “*lomTsetfo*” kusho *lomTsetfo* lona, lokufaka ekhatsi emashejuli awo, futsi kufaka ekhatsi *timiso* letentiwe ngekulandzela wona;
- (xvii) “*lowakakhe*” kusho umuntu longumlingani *emshadweni*, kumbe *ekuhlanganisweni ngekwelisiko*, kumbe ebudlelwaneni bebantfu bebulili lobufanako kumbe bebulili lobungafani basomphelelane, lobudzinga kutsi bantfu bahlalisane futsi besekelane bona bobabili ngekwetimali kanye nangekwemoya, nafutsi lobo budlelwano lobufakazelwe sitatimende lesifungelwe lesimisiwe lesifakazelwe sivumelwano lesisayiniwe, futsi *budlelwano bebantfu labahlalisana* kusho intfo lehambisana naloko; 5 10
- (xviii) “*-misiwe*” kusho loko lokubonelelwe ngetimiso, futsi sento lesitsi “*kumisa*” sisho intfo lehambisana naloko, nafutsi emagama latsi “*-misiwe ngesikhatsi nesikhatsi*” abhekise esigabeni 7(2);
- (xix) “*sakhamuti*” inchazelo yaleligama itsatselwe kumTsetfo weKuba Sakhamuti saseNingizimu Afrika, 1995, futsi ligama lelitsi “*kuba sakhamuti*” lisho into lehambisana naloko; 15
- (xx) “*sicelo*” kusho sicelo lesentiwe efomini lelimisiwe lesihambisana netidzingakalo futsi lesiniketa imininingwane kanye netincwadzi lokungahle kumiswe;
- (xxi) “*sichamuki*” kusho umuntu lotsite longesiso *sakhamuti* kumbe *umhlali*, 20 kepha futsi longesiso *sichamuki lesingekho emtsetfweni*;
- (xxii) “*sichamuki lesingekho emtsetfweni*” kusho sichamuki le kuba kwaso *eRiphabhili* kusento lesephula *lomTsetfo* lona, futsi kufaka ekhatsi *umuntu lowencatjelwe*;
- (xxiii) “*sikhulu lesiphetse umkhumbi*” kusho *sikhulu lesiphetse umkhumbi* futsi 25 kubhekise kulomuntu lowo nobe ngabe ngusiphi sikhatsi kunguye lophetse kumbe longumachuzu *wemkhumbi*;
- (xxiv) “*sikhumulo sekungena eveni*” kusho indzawo lemiswe *ngesikhatsi nesikhatsi* lapho *sichamuki* kumele siyewuvela khona ngembikwekutsi sinyakate, sihambe sivakasha kwesikhashana kumbe sihlale ngekhatsi, kumbe singene *eRiphabhili*; 30
- (xxv) “*sikhwama sekucecesha*” kusho umculu wawonkhewonkhe lekubhekiswe kuwo esigabeni 2(2)(g)(i) *salomTsetfo*;
- (xxvi) “*simo sesichamuki eveni*” kusho imvume yekuhlala somphelelane kumbe *imvume yekuhlala sikhashana* lekhishelwe umuntu ngekumisa 35 kwalomTsetfo, futsi kufaka ekhatsi emalungelo kanye netibopho lokusukela lapho, kufake ekhatsi nobe ngutiphi timeko kanye nemibandzela yekuhlala, lokubekwe *liTiko* ngalesikhatsi likhipha imvume lenjalo;
- (xxvii) “*sisebenti sahumumende lesibukene netifikinamtfwalo*” kusho sisebenti sahumumende *seliTiko*, kumbe lomunye umuntu lonaletu tidzingakalo letimisiwe, locashwe *liTiko* kutsi ente loyo msebenti ngesikhatsi nesikhatsi futsi, ngetinjongo *talomTsetfo*, kufaka ekhatsi umuntu locashwe *liTiko*, kumbe lonekontilaki *neliTiko*, logunyatwe *liTiko* kutsi asebentise emandla latsite futsi ente imisebenti letsite egameni kanye nasesikhundleni *seliTiko*; 40
- (xxviii) “*timiso*” kusho imitsetfo leyetayelekile leyemukelwe yiNdvuna ngemuva kwekubonisana neBhodi ngekumisa kwalomTsetfo nafutsi letikhishiwe; 45
- (xxix) “*umbhalitimali lobhalisiwe*” kusho umuntu lekubheswe kuye esigabeni 1 semTsetfo wekuMiswa kwebaBhalitimali labaBhalisiwe (umtsetfo lochamuke neliLunga lePhalamende), 1993 (umTsetfo No. 67 wa 1993), futsi kufaka ekhatsi umbhalitimali lomunye longesiye umbhalitimali lobhalisiwe, lowemukelekile kutsi ungumbhalitimali ngaphansi kwanobe ngumuphi umtsetfo nalotfunywe ngalokucondze ngco kumbe lokungakacondzi ngco ngumbhalitimali lobhalisiwe kutsi ente nobe ngumuphi walomsebenti kumbe wonkhe lomsebenti locatjangelwako kulomTsetfo; 50
- (xxx) “*umbuso wakulelinye live*” kusho intfo lengaphili leyentiwe ngumtsetfo yaba ngumuntu leyo lebusa *kulelinye live*; 55
- (xxxi) “*umcash*” kufaka ekhatsi umuntu lobopheleleke njengemcash ngekwesivumelwano lesiboshwe yikontilaki yemsebenti lesebenta kuleyo ndzawo kumbe, endzabeni yentfo lengaphile leyentiwe ngumtsetfo yaba ngumuntu, kusho sikhulunhloko lesiphetse salapho kumbe lomuntu lowo leso sikhulu lesitfume yena kutsi abe nelivi lekugcina etindzabeni letiphatselene nebasebenti; 60
- (xxxii) “*umCondzisijikelele*” kusho umCondzisijikelele *weliTiko*;

- (xxxiv) “*resident*” means the holder of a permanent residence permit referred to in section 25 of *this Act*;
- (xxxv) “*ship*” includes any vessel, boat, aircraft or other *prescribed* conveyance;
- (xxxvi) “*spouse*” means a person who is party to a *marriage*, or a *customary union*, or to a permanent homosexual or heterosexual *relationship* which calls for cohabitation and mutual financial and emotional support, and is proven by a *prescribed* affidavit substantiated by a notarial contract and “*spousal relationship*” has a corresponding meaning; 5
- (xxxvii) “*status*” means the permanent or *temporary residence issued to a person in terms of this Act* and includes the rights and obligations flowing therefrom, including any term and condition of residence imposed by the *Department* when issuing any such permits; 10
- (xxxviii) “*temporary residence*” means a permit referred to in section 10 of *this Act*;
- (ixl) “*this Act*” means *this Act*, including its schedules, and includes the *regulations* made pursuant thereto; 15
- (xl) “*training fund*” means the public record referred to in section 2(2)(g)(i) of *this Act*;
- (xli) “*undesirable person*” means a person referred to in section 30 of *this Act*;
- (xlii) “*visa*” means the *prescribed* endorsement issued upon *application* on the valid *passport* of a *foreigner* granting such *foreigner* the authority to proceed to the *Republic* to report for a *prescribed* examination to an immigration officer at the *port of entry* with a view to *admission* on a specified *temporary residence*, which at any time before *admission* may be withdrawn by the *Department*; 20
- (xliii) “*work*” means business, commercial or remunerative activities within the *Republic*, excluding *work* on the basis of a permit referred to in sections 12 or 14, or *work* for a foreign *employer* pursuant to a contract which only partially calls for activities in the *Republic*, or *work* as a business or profession mainly based outside the *Republic* but requiring activities within the *Republic*. 25
- (2) In sections 15, 18, 19, 21, 26 and 27, whenever a certificate by a *chartered accountant* is called for, the applicant may instead elect that such certificate be furnished by another person to whom the facts contained in the certificate are known, but in every case where the certificate is issued to a person other than a *chartered accountant*, it shall be necessary for the *Department* to verify the facts itself. 30

OBJECTIVES AND STRUCTURES OF IMMIGRATION CONTROL 35

Objectives and functions of immigration control

2. (1) In the administration of *this Act*, the *Department* shall pursue the following objectives:

- (a) Promoting a human-rights based culture in both government and civil society in respect of immigration control; 40
- (b) facilitating and simplifying the issuance of permanent and *temporary residences* to those who are entitled to them, and concentrating resources and efforts in enforcing *this Act* at community level and discouraging *illegal foreigners*;
- (c) detecting and deporting *illegal foreigners*; 45

- (xxxiii) “*umentisicelo wetemabhizimisi*” kusho intfo lengaphili leyentiwe ngumtsetfo yaba ngumntfu lesungulwe ngaphansi kwemitsetfo ye*Riphabliki* kumbe yakulelinye live, leyontfo lechuba umsebenti webhizimisi, ngaphandle kwekufuna kwenta inzuzo, wetekulima kumbe wetekuhweba ngekhatsi kwe*Riphabliki*, nafutsi loko lokwenta sicelo semvume yetemabhizimisi lekubhekiswe kuyo esigabeni 21 *salomTsetfo*; 5
- (xxxiv) “*umhlali*” kusho umnikati wemvume yekuhlala somphelane lekubhekiswe kuyo esigabeni 25 *salomTsetfo*;
- (xxxv) “*umkhumbi*” kufaka ekhatsi nobe nguwuphi umkhumbi lotfwala bagibeli kumbe imphahla, sikebhe, libhanoyi kumbe lenye intfo yekuhamba lemisiwe; 10
- (xxxvi) “*umncele*” kusho imincele yelive lonkhe yase*Riphabliki* futsi kufaka ekhatsi tikhumulo tekungena eveni, tindzawo letigudla lugu kanye netindzawo lapho lwandle lwakulelo live luphelela khona;
- (xxxvii) “*umndeni losondzele*” kusho bantfu labatihlobo tengati, lapho kubalwa khona umshado kumbe budlelwano bebantfu labahlalisanako njengalobunye balobo buhlobo lobunjalo, kepha bantfu lababelusendvo lunye ababalelwa kulabo bantfu; 15
- (xxxviii) “*umnikati*” kusho umnikati lobhaliswe emabhukwini futsi, endzabeni yemkhumbi, kufaka ekhatsi umntfu lowucashile lowo mkhumbi kanye nanobe ngusiphi sitfunywa salowo mnikati kumbe semuntfu locashe umkhumbi, lesingekhatsi kwe*Riphabliki*; 20
- (ixl) “*umsebenti*” kusho umsebenti webhizimisi, wekuhweba kumbe umsebenti umntfu laholelwa wona lowentiwa ngekhatsi kwe*Riphabliki*, akufaki ekhatsi umbesenti lowentiwa ngemvume lekubhekiswe kuyo esigabeni 12 kumbe 14, kumbe umsebenti wemcashi wakulelinye live lowentiwa ngaphansi kwekontilaki le kuyincenye yayo kuphela lefuna kusetjentwe e*Riphabliki*, kumbe umsebenti lonjengebhizimisi kumbe umsebenti lofundzelwe lotinte kakhulu ngaphandle kwe*Riphabliki* kepha lofuna kusetjentwe la ngekhatsi e*Riphabliki*; 25
- (xl) “*umshado*” kusho budlelwane bendvodza nemfati lobuvunyelwe ngekwemitsetfo lobucondze kuba somphelane futsi lobentiwe ngaphansi kwemitsetfo yase*Riphabliki*, kumbe ngaphansi kwemitsetfo yakulelinye live njengaloku kumisiwe ngesikhatsi nesikhatsi, futsi kufaka ekhatsi kuhlanganiswa ngekwelisiko; 30
- (xli) “*umtimba wemBuso*” inchazelo yaleligama ichazwe esigabeni 239 semTsetfosisekelo; 35
- (xlii) “*umuntfu longakemukeleki*” kusho umntfu lekubhekiswe kuye esigabeni 30 *salomTsetfo*;
- (xlili) “*umuntfu lowencatjelwe*” kusho nobe ngabe ngumuphi umntfu lekubhekiswe kuye esigabeni 29 *salomTsetfo*; 40
- (2) Kutigabancane 15, 18, 19, 21, 26, na 27, nobe kunini lapho kufuneka kukhishwe sitifiketi sembhaliimali lobhalisiwe, uma atsandza lowo mentisicelo angatikhetsela kutsi leso sitifiketi sikhishwe ngulomunye umntfu lonelwati lwemininingwane lekuleso sitifiketi, kepha-ke kutakutsi ngaso sonkhe sikhatsi lapho sitifiketi sikhishwa ngulomunye umntfu lokungesiye umbhalitimali lobhalisiwe kube nesidzingo sekutsi liTiko lona ngekwalo lente bufakazi bekutsi leyo mininingwane iliciniso. 45

TINJONGO KANYE NEMITIMBA LEPHETSE TINDZABA TETIFIKINAMTFWALO

Tinjongo kanye nemisebenti yekuphatfwa kwetindzaba tetifikinamtfwalo

2. (1) Ekusebentiseni *lomTsetfo*, liTiko litawulandzelela letinjongo letilandzelako: 50
- (a) Kukhutsata lisiko lelesekele kumalungelo eluntfu kuyo yomibili imikhakha, hulumente kanye nalapho takhamuti tihleti khona, macondzana nekuphatfwa kwetindzaba tetifikinamtfwalo;
- (b) kwelekelela kanye nekwenta lula kukhishwa kwetimvume tekuhlala sikhashana kanye netekuhlala somphelane talabo labafanelekile kutsi batitfole, kanye nekufaka imitfombolusito kanye netaba lokunyenti ekwenteni kutsi *lomTsetfo* uyalandzelwa ezingeni lasemphakatsini kanye nekungakhutsati kuba khona kwetichamuki letingekho emtsetfweni; 55
- (c) kutfola umkhondvo kanye nekubuyisela tichamuki letingekho emtsetfweni emaveni akubo; 60

- (d) creating a climate of cooperation with other organs of State to encourage them to take responsibility in implementing *this Act* within the ambit of their respective powers and functions;
 - (e) preventing and deterring xenophobia within the *Department*, any sphere of government or *organ of State* and at community level; 5
 - (f) creating a climate of cooperation with communities and organs of civil society, including trade unions, to encourage them to cooperate with the *Department* to implement *this Act*;
 - (g) promoting a climate within the *Republic* which encourages *illegal foreigners* to depart voluntarily; 10
 - (h) ensuring that, subject to *this Act*, migration to and from the *Republic* takes place only at ports of entry and illegal crossing of the *borders* is deterred, detected and punished;
 - (i) promoting integration of functions, harmonisation and cooperative relations among all organs of State with responsibilities in respect of controlling the *borders* and activities at ports of entry; 15
 - (j) regulating the influx of *foreigners* and *residents* in the *Republic* to—
 - (i) promote economic growth, *inter alia*, by—
 - (aa) ensuring that businesses in the *Republic* may employ *foreigners* who are needed; 20
 - (bb) facilitating foreign investments, tourism and industries in the *Republic* which are reliant on international exchanges of people and personnel;
 - (cc) enabling exceptionally skilled or qualified people to sojourn in the *Republic*; 25
 - (dd) increasing skilled human resources in the *Republic*;
 - (ee) facilitating the movement of students and academic staff within the Southern African Development Community for study, teaching and research; and
 - (ff) promoting tourism; 30
 - (ii) where applicable, encouraging the training of *citizens* and *residents* by *employers* to reduce *employers*'s dependence on *foreigners*' labour and promote the transfer of skills from *foreigners* to *citizens* and *residents*;
 - (iii) enable family reunification;
 - (k) administering the *prescribed* fees, fines and other payments it exacts or receives in such a fashion as to defray the overall cost of its operation 35
 - (l) administering refugee protection and related legislation;
 - (m) administering *citizenship* by naturalisation and incidental matters relating thereto; and
 - (n) facilitating compliance with the *Republic*'s international obligations. 40
- (2) In order to achieve the objectives set out in subsection (1), the *Department* shall—
- (a) inspect *workplaces* in the *prescribed* manner to ensure that no *illegal foreigner* is employed and that *foreigners*, if any, are employed in the job description and at the terms and conditions set out in their *temporary residences*, and that the relevant training fees, if any, are paid; 45
 - (b) inspect institutions of learning to ensure that *illegal foreigners* are not enrolled therein;
 - (c) liaise with the South Africa Police Service to—

- (d) kudala umoya wekubambisana naleminye imitimba yemBuso kuyo yonkhe imikhakha yahulumende kuze ikhutsatwe kutsi iwemukele lomtfwalo wekusebentisa lomTsetfo kuto tonkhe tindzawo lapho lamandla kanye nemisebenti yalemitimba lokwehlukehlukeno kuhamba kufike khona;
- (e) kuvimbela kanye nekucedza umoya wekutondza tichamuki ngekhatsi eTikweni, kunobe ngumuphi umkhakha wahulumende kumbe umtimba wemBuso kanye nasezingeni lasemphakatsini; 5
- (f) kudala umoya wekubambisana nemiphakatsi kanye nemitimba yasekuhlaleni kwetakhamuti, kufake ekhatsi tinyonyani tebasebenti, kuze konkhe loku kukhutsatwe kutsi kubambisane neliTiko ekusebentiseni lomTsetfo; 10
- (g) kukhuphula ngekhatsi kweRiphabliki umoya lokhutsata tichamuki letingekho emtsetfweni kutsi titiphumele ngekutitsandzela;
- (h) kucinisekisa, ngekulandzela lomTsetfo, kutsi kungena kanye nekuphuma kwebantfu eRiphabliki kwenteka kuphela etikhumulweni tekungena eveni nekutsi kwewelwa kwemincele ngalokungekho emtsetfweni kuyavinjelwa, 15 kuyabonwa futsi kuyajeziswa;
- (i) kukhutsata kuhlanganiswa ndzawonye kwemisebenti, kulunganiswa kanye nebudlelwane lobune kubambisana emkhatsini wayo yonkhe imitimba yemBuso lebukene nemtfwalo wekuphatfwa kwemincele kanye naloko lokwenteka etikhumulweni tekungena eveni; 20
- (j) kuhambisa ngendlela yakhona kutfuteleka eRiphabliki kwetichamuki kanye nebahlali kuze—
- (i) kukhutsatwe kukhula kwemnotfo—
- (aa) ngekcucinisekisa kutsi emabhizimisi aseRiphabliki ayakwati kucasha tichamuki letidzingekeko; 25
- (bb) ngekwelakelela lutalisomali lolubuya kulamanye emave, kuvakasha kanye netimboni eRiphabliki, loku lokwetsembele ekuntjintjiselaneni kwemave ngemave ngebantfu kanye netisebenti;
- (cc) ngekwenta bantfu labanemakhono kanye netimphawumfundvo lokungakavami kutsi bakwati kuhamba bavakashe kwesikhashana eRiphabliki; 30
- (dd) ngekwandzisa umtfombolusito webantfu labanemakhono eRiphabliki;
- (ee) ngekwelakelela kuhamba kwebafundzi kanye nebafundzisi ngekhatsi esifundzeni seMphakatsi wekuTfufukisa i-Afrika leseNingizimu (i-SADC) kuze bakwati kufundza, bafundzise futsi bente lucwaningo; kanye 35
- (ff) ngekhuphula tekuvakasha;
- (ii) lapho kudzingeke khona, kukhutsata kuceceshwa kwetakhamuti kanye nebahlali baceceshwa bacashi, kuze kuncishiswe kwetsembela kwebacashi ekusetjentelweni tichamuki nafutsi kugcugcutelwe kwendluliselwa kwemakhono latfolakala ebantfwini labatichamuki aye kubantfu labatakhamuti kanye nalababahlali;
- (iii) kuhlanganiswe imindeni;
- (k) kuphatfwa kwetimali letimisiwe, tihlawulo kanye naletinye timbhadalo liTiko lelitibitako kumbe lelitumukelako ngendlela yekutsi likhokhe tindleko talo tekwenta wonkhe umsebenti walo sewuphelele; 45
- (l) kusebentisa umtsetfo wekuvikela babaleki kanye naleminye imitsetfo lephatselene naloko;
- (m) kuphatsa tindzaba tebantfu lasebentiwe kutsi babe takhamuti ngekubaniketa emalungelo etakhamuti kanye netindzaba letihambisana naloko; 50
- (n) kwelekelela kutsi bantfu batfobe tibopho temave ngemave teRiphabliki.
- (2) Kuze likwati kufeza letinjongo letendlalwe esigabenincane (1), liTiko—
- (a) litawuhlola tindzawo temsebenti ngendlela lemisiwe kucinisekisa kutsi akukho sichamuki lesingekho emtsetfweni lesicashwe lapho nekutsi tichamuki, nangabe tikhona, ticashwe kulemisebenti leyo lapho inchazelo yayo futsi nangaphansi kwetimeko kanye nemibandzela loko lokwendlalwe kutimvume tekuhlala sikhashana taleto tichamuki, nekutsi timali tekucecesha letifunekako, nangabe tikhona, tiyakhokhwa; 55
- (b) litawuhlola tikhungo tekufundza kuze licinisekise kwekutsi atikho tichamuki letingekho emtsetfweni letibhalisiwe kutsi tifundze lapho; 60
- (c) litawuchumana nebemSebenti wemaPhoyisa aseNingizimu Afrika (i-SAPS)—

- (i) ensure that the identity of people who are arrested, detained or convicted is checked for purposes of *this Act*; and
- (ii) educate and instruct law-enforcing agencies to detect *illegal foreigners* and report them to the *Department*;
- (d) liaise with the South African Revenue Service to ensure that the identity of people who contravene the provisions of the laws administered by the Commissioner for the South African Revenue Services is checked for purposes of *this Act*; 5
- (e) educate communities and organs of civil society on the rights of *foreigners*, *illegal foreigners* and refugees, and conduct other activities to prevent xenophobia; 10
- (f) in cooperation with the *Department* of Foreign Affairs—
 - (i) promote programmes in foreign countries with the aim of deterring people from becoming *illegal foreigners*; and
 - (ii) table the need for cooperation in preventing migration towards the *Republic* on the agenda of relations with *foreign states*, negotiating appropriate measures and agreements with such *foreign states*; 15
- (g) maintain public records showing funds received or collected—
 - (i) under *this Act* from *employers* as training fees or fines, which, in the *prescribed* percentage, shall be known as the *training fund*; 20
 - (ii) from *foreign states* to defray the cost of repatriating *illegal foreigners* originating from their country, as determined through international relations and agreements;
 - (iii) from donors or other sources; and
 - (iv) from other fees and fines imposed or exacted by the *Department* in terms of *this Act* which, in the percentage *prescribed* from time to time, shall be known as the judicial assistance fund; 25
- (h) monitor and exact compliance from any person or entity exercising responsibilities or bearing duties or obligations in terms of *this Act*;
- (i) deport *illegal foreigners* who are unwilling to leave the *Republic* voluntarily; 30
- (j) train its investigative unit to detect *illegal foreigners*, monitor compliance with the terms and conditions of permits, control *borders*, and perform any other function under *this Act* or which may be delegated to it;
- (k) be empowered to contract through public tender with private persons to perform under its control any of its functions, including but not limited to detaining and escorting *illegal foreigners* for *deportation* purposes and manning ports of entry; 35
- (l) administer ports of entry and monitor *borders* in terms of section 36 of *this Act*; and
- (m) conduct any other activity called for by *this Act* or necessary for or conducive to its implementation. 40

Powers of *Department*

3. (1) Subject to, and for the purposes of, *this Act*, through its duly authorised officers, the *Department* may—

- (i) kutewucinisekisa kutsi bantfu lababoshwako, labavalelwako kumbe labalahlwa licala bayatiwa kutsi bobani ngetinjongo *talomTsetfo*; nafutsi
- (ii) kufundzisa kanye nekwelayeta imitimba lelwa nelwephulomtsetfo kutsi ikwati kutfola umkhondvo *wetichamu letingekho emtsetfweni* futsi ibikele *liTiko* ngato; 5
- (d) litawchumana nebemSebenti waMalingena waseNingizimu Afrika (i-SARS) kutewucinisekisa kutsi bantfu labephula tibonelelo temitsetfo lesetjentsiswa nguNkomisheni wemSebenti waMalingena waseNingizimu Afrika bayatiwa kutsi bobani ngetinjongo *talomTsetfo*;
- (e) litawufundzisa imiphakatsi kanye netakhamuti lapho tihleti khona ngemalungelo *etichamuki, tichamuki letingekho emtsetfweni* kanye *nebabaleki*, futsi litawutsatsa letinye tinyatselo tekuvimbela kutondza tichamuki; 10
- (f) ngekubambisana *neliTiko* letiNdzaba tangaPhandle—
- (i) litawukhutsata tihlelo kulamanye emave ngenjongo yekukhutsata bantfu balapho kutsi bayekele kuba *tichamuki letingekho emtsetfweni*; 15
- (ii) litawubeka etafuleni sidzingo sekubambisana kuze kuvinjelwe kungena kwebantfu bete e*Riphabliki* ngalesikhatsi kukhulunywa ngetindzaba tebudlelwano be*Riphabliki nemibuso yakulamanye emave*, litawukhulumisana naleyo *mibuso yakulamanye emave* ngetinyatselo lekufanele titsafwe kanye netivumelwano lekufanele tentiwe; 20
- (g) litawugcina imiculu levulekele wonkhe umphakatsi lebonisa timali letemukelwe kumbe letigcogewe—
- (i) ngaphansi kwalomTsetfo kubacashi njengetimali tekucecesha kumbe tihlawulo, leto nakusetjentsiswa iphesenti *lemisiwe*, letitakwatiwa ngekutsi sikhwama sekucecesha; 25
- (ii) *emibusweni yakulamanye emave* kutewukhokhela tindleko tekubuyiselwa kwetichamuki *letingekho emtsetfweni* letichamuka kulawo mave, njengaloku kuncunyiwe ngaphansi kwebudlelwano kanye netivumelwano kwemave ngemave; 30
- (iii) kulabo labakhiphe iminikelo kanye nakuleminye imitfombo; kanye
- (iv) naletinye timali kanye netinhlawulo letetfweswe kumbe letibitwe *liTiko* ngekumisa kwalomTsetfo, leto nakusetjentsiswa iphesenti *lemiswe ngesikhatsi nesikhatsi* letitakwatiwa ngekutsi sikhwama sekusita kutemakhotho; 35
- (h) litawubuka kutsi umtsetfo uyatfotjelwa yini futsi lilindzele into lefanako kunobe ngubani kumbe nobe yini lokubukene nemtfwalo lotsite kumbe lokwetfweswe umsebenti lotsite kumbe tibopho letitsite ngekumisa kwalomTsetfo;
- (i) litawubuyisela *emaveni akubo tichamuki letingekho emtsetfweni* letingafuni kutihambela tona ngaphandle kwekutjelwa ngumuntfu; 40
- (j) litawcecesha licembu lalo lebhaphenyi kutsi likwati kutfola umkhondvo *wetichamuki letingekho emtsetfweni*, libuke kutsi timeko kanye nemibandzela yetimvume kuyatfotjelwa yini, liphatse *imincele* futsi lente nobe nguyiphi leminywe imisebenti ngaphansi kwalomTsetfo kumbe lekutakwenteka litfunywe kutsi liyente; 45
- (k) litawunikwa emadla ekunika emakontilaki ngethenda yawonkhewonkhe, liwanike bantfu labatimele kutsi basebente ngaphansi kweluphatfo lwalo *liTiko* kutsi bente nobe nguyiphi yalemisebenti yalo, kufake ekhatsi kepha kungagcini lapho, kuvalela kanye nekupheleketela *tichamuki letingekho emtsetfweni* ngetinjongo tekuyotibuyisela *emaveni akubo* kanye nekugadza tikhumulo tekungena eveni; 50
- (l) litawuphatsa tikhumulo tekungena eveni futsi licaphele kutsi konkhe kuhamba kahle yini *eminceleni* ngekumisa kwesigaba 36 *salomTsetfo*; futsi
- (m) litakwenta nobe ngumuphi lomunye umsebenti lobitwa ngulomTsetfo kutsi wentiwe kumbe lodzingakalele kumbe lotakwenta kube lula kusebentisa lomTsetfo. 55

Emandla eliTiko

3. (1) Ngekulandzela wona kanye nageinjongo tawo *lomTsetfo*, kanye nangekusebentisa tisebenti tahlulumende letigunyatwe ngendlela lefanele, *liTiko*— 60

- (a) enter *workplaces* and inspect employment records for the purposes of *this Act*;
 - (b) enter and inspect for purposes of *this Act* any place open to the public;
 - (c) exercise any powers relevant to, or necessary for, the functions set out in section 2(2);
 - (d) request any sphere of government or *organ of State* to— 5
 - (i) take actions or adopt procedures to ensure that the recipients of their services are identified as *citizens* and *residents* or *foreigners*; and
 - (ii) request that *prescribed* services, or licenses, or concessions or other actions be subject to proof of *status* or *citizenship*,
provided that such requirements shall not prevent the rendering of such 10
services to *illegal foreigners* when so required by the Constitution or a law;
 - (e) request anyone in the *Republic*, who is reasonably suspected of being an *illegal foreigner*, to identify himself or herself as a *citizen* or *resident*, or to produce a permit to be in the *Republic*;
 - (f) organise and participate in community fora or other community-based 15
organisation to deter xenophobia and involve the *citizenry* in the *application* and implementation of *this Act*, and educate the *citizenry* in migration issues;
 - (g) apprehend, detain and deport any *illegal foreigner*;
 - (h) despite any other law, represent the State in any proceedings in a *Court* in 20
respect of any matter arising out of *this Act*;
 - (i) assist the public prosecution of any offence under *this Act*;
 - (j) enter into an agreement with any person, including any department of State, in terms of which the *Department* will be authorised to make use of any of the facilities, equipment or personnel belonging to, or under the control, or in the employment of such person or department; 25
 - (k) exercise any other power called for by *this Act*, or necessary for or conducive to its implementation; and
 - (l) delegate any of its powers and functions, provided that—
 - (i) the terms and conditions of such delegations are approved by the *Minister* after consultation with the *Board*; and 30
 - (ii) such delegation is performance audited by the *Director-General* and reviewed by the *Board* every twelve months to express a recommendation to the *Minister*, failing which it shall lapse.
- (2) Subject to *this Act*, the powers and functions vested in the *Department* and the *Director-General* in terms of *this Act* shall be exercised and performed as directed by the 35
Minister.
- (3) The *Minister* may delegate to the *Director-General* any of the powers and functions vested in him or her in terms of *this Act*.

Immigration Advisory Board

- 4. (1) The Immigration Advisory Board is hereby established. 40
- (2) The Board shall be chaired by a designee of the *Minister* and consist of—
 - (a) one representative of the *Department* of Trade and Industry;
 - (b) one representative of the *Department* of Labour;

- (a) lingangena etindzaweni tekusebenta lihlole imiculu lephatselene nekucashwa kwebantfu ngetinjongo *talomTsetfo*;
- (b) ngetinjongo *talomTsetfo*, lingangena lihlole nobe nguyiphi indzawo levulekele umphakatsi;
- (c) lingasebentisa nobe nguwapphi emandla laphatselene kumbe ladingakalele lemisebenti leshiwo esigabeni 2(2); 5
- (d) lingacela nobe nguwapphi umkhakha wahulumende kumbe *umtimba wemBuso* kutsi—
- (i) batsatse tinyatselo kumbe babeke tinchubo tekucinisekisa kutsi labo labemukela lusito lwabo bayatiwa kutsi *batakhamuti nebahlali*, kumbe *batichamuki*; futsi 10
- (ii) bacele kutsi imisebenti, kumbe emalayisensi, kumbe kwehliselwa lokutsi *lokumisiwe*, kumbe letinye tento letentiwako, kwentiwa etimweni lapho kunebufakazi khona bekutsi lomuntfu siyini *simo sesichamuki eveni* sakhe kumbe ingabe *usakhamuti* yini, 15
- ingce nje nangabe leto tidzingakalo atinakuvimbela kuniketwa kwalolo lusito lolunikwa *tichamuki letingekho emtsetfweni* nangabe kudzingakala ngekumisa kwemTsetfosisekelo kumbe lomunye umtsetfo kwekutsi baniketwe lona;
- (e) lingacela nobe ngubani la *eRiphabliki* lekunesizatfu lesivakalako sekutsi asolwe kutsi kungenteka abe sichamuki lesingekho emtsetfweni kutsi atichaze kutsi ingabe *usakhamuti* kumbe ungumhlali na, kumbe kutsi akhiphe imvume yekuba se*Riphabliki*; 20
- (f) lingagcugcutela futsi lihlanganyele etinhlanganweni temphakatsi kumbe letinye tihlangano letitinte emphakatsini ekucedvweni kwekutondza tichamuki futsi limbandzakanye takhamuti ekutseni tikwati kusebentisa *lomTsetfo* kanye nasekusetjentisweni kwawo, futsi lifundzise takhamuti ngetindzaba tekuphuma kanye nekungena eveni; 25
- (g) lingabamba, livalele futsi libuyisele *umuntfu eveni lakubo* nobe ngusiphi sichamuki lesingekho emtsetfweni; 30
- (h) ngisho nanobe kukhona lomunye umtsetfo, lingamelela umBuso kunobe ngutiphi tinchubo tase*Khotho* macondzana nanobe nguyiphi indzaba lesukela kulomTsetfo;
- (i) lingasita bashushisi bahlumende nganobe ngusiphi sephulomtsetfo ngaphansi kwalomTsetfo; 35
- (j) lingenta sivumelwano nanobe ngubani, kufake ekhatsi nobe nguliphi litiko lemBuso, lekutakutsi ngekumisa kwaleso sivumelwano *liTiko* libe neligunya lekusebentisa nobe ngutiphi taleto tindzawo tekusitakala, imphahlamsebenti kumbe tisebenti temnikati walapho kumbe umuntfu lophetse lapho, kumbe umuntfu locashwe ngulowo muntfu kumbe litiko; 40
- (k) lingawasebentisa nobe nguwapphi lamanye emandla labitwa ngulomTsetfo kumbe ladingakalele wona kumbe latakwenta kube lula kusetjentiswa kwawo; futsi
- (l) lingatfuma labanye bantfu kutsi basebentise nobe nguwapphi alamandla alo futsi bente nobe nguyiphi yalemisebenti yalo, ingce nje nangabe— 45
- (i) timeko kanye nemibandzela kwaloko kutfuma kutawuvunyelwa yi*Ndvuna* ngemuva kwekubonisana ne*Bhodi*; futsi
- (ii) loko kutfuma kutawuhlolwa kutsi kusebenta kahle yini ngum*Condzisijikelele* futsi kubuyeketwe yi*Bhodi* ngemuva kwaletu naleto tinyanga letilishumi nambili kuze yente sincomo e*Ndvuneni*, loko lekutakutsi nangabe kungakenteki loko kutfuma kuphele. 50
- (2) Ngekulandzela loMtsetfo, emandla kanye nemisebenti lokwetfweswe liTiko kanye nem*Condzisijikelele* ngekumisa kwalomTsetfo kutawusetjentiswa futsi kwentiwe njengaloku kutawulayeta i*Ndvuna*.
- (3) I*Ndvuna* inganika um*Condzisijikelele* nobe nguwapphi alamandla kanye nemisebenti letfweswe kona ngekumisa kwalomTsetfo. 55

IBhodi yekweLuleka ngetiNdzaba tetiFikinamtfwalo

4. (1) Ngaloku kusungulwa i*Bhodi* yekweLuleka ngetiNdzaba tetiFikinamtfwalo.
- (2) Sihlalo wale*Bhodi* kutakuba ngumuntfu lotfunywe yi*Ndvuna* futsi itawufaka—
- (a) ummeleli munye weli*Tiko* letekuHweba netiMboni; 60
- (b) ummeleli munye weli*Tiko* letebaSebenti;

- (c) one representative of the *Department* of Tourism;
 - (d) one representative of the *Department* of Finance;
 - (e) one representative of the *Department* of Safety and Security;
 - (f) one representative of the South African Revenue Service;
 - (g) one representative of the *Department* of Education; 5
 - (h) one representative of the *Department* of Foreign Affairs;
 - (i) one representative of the *Department* of Defence;
 - (j) the *Director-General*;
 - (k) up to five persons from civil society, including one representing organised labour and one representing organised business, appointed by the *Minister* 10 after the *Minister* has given notice in the *Gazette* soliciting public nominations of such persons; and
 - (l) up to four individuals appointed by the *Minister* on grounds of their expertise in administration, regulatory matters or immigration law, control, adjudication or enforcement. 15
- (3) The *Board* shall meet when called by the Chairperson and—
- (a) shall meet regularly;
 - (b) may determine its procedures at meetings;
 - (c) may invite immigration officers and other employees of the *Department* to attend or participate in its meetings; and 20
 - (d) may appoint committees from its members to assist in the performance of its functions.
- (4) A member of the *Board* referred to in subsection (2)(k) and (l) shall—
- (a) serve for a four-year-term, at the expiry of which they shall be eligible for one or more re-appointments, provided that the *Minister* may elect to fill any vacancy which may occur by appointing a person for the unexpired portion of the term of the member in whose place such person is appointed; 25
 - (b) at no time—
 - (i) be or become an unrehabilitated insolvent;
 - (ii) be or have been judicially declared of unsound mind; 30
 - (iii) suffer an infirmity of mind or body preventing him or her from the proper discharge of the duties of his or her office;
 - (iv) be convicted by final conviction or sentence of an offence without the option of a fine;
 - (v) be or become a political office bearer; or 35
 - (vi) be or have been removed from an office of trust on account of misconduct involving theft or fraud;
 - (c) cease to be a member—
 - (i) on resignation;
 - (ii) if requested by the *Minister* to resign for good cause; 40
 - (iii) if he or she fails to attend two consecutive meetings of the *Board*, unless his or her apology has been accepted by the *Board*; or
 - (iv) if he or she becomes disqualified in terms of *this Act*; and
 - (d) be paid such remuneration and be entitled to such benefits and allowances as determined from time to time by the *Minister* after consultation with the 45 *Director-General* and with the approval of the *Minister* of Finance.

- (c) ummeleli munye weliTiko letekuVakasha;
- (d) ummeleli munye weliTiko letetiMali;
- (e) ummeleli munye weliTiko letekuPhepha nekuVikeleka;
- (f) ummeleli munye weliTiko lemiSebenti yaMalingena waseNingizimu Afrika (i-SARS); 5
- (g) ummeleli munye weliTiko letemFundvo;
- (h) ummeleli munye weliTiko letiNdzaba tangaPhandle;
- (i) ummeleli munye weliTiko leteMphi
- (j) umCondzisijikelele;
- (k) bantfu labefika kulabasihlanu lababuya ekuhlaleni kwebantfu emphakatsini, kufake ekhatsi munye umuntfu lomelele basebenti labangemalunga etinhlangano tebasebenti namunye lomelele bosomabhizimisi labangemalunga etinhlangano tabosomabhizimisi, labakhetfwe yiNdvuna ngemuva kwekutsi iNdvuna inikete inothisi kuGazethi icela kutsi umphakatsi wenyule labo bantfu; futsi lobafunakokutsi yenyule ummeleli munye ngayinye ngayinye; 10
- (l) nekufika ebantfwini labane labakhetfwe yiNdvuna ngenca yebuciko babo kutekuphatsa, tindzaba letiphatselene netimiso kumbe umtsetfo wetetifikinamtfwalo, kuphatfwa kwawo, kwenganyelwa kwawo kumbe kubona kutsi uyasebenta. 15 20
- (3) IBhodi itawuhlangana nayibitwe yiNdvuna kumbe ngumCondzisijikelele kutsi ihlangane, ingce nje nangabe—
- (a) itawuhlangana njalo njalo;
- (b) itakusho emihlanganweni kutsi tiyini tinchubo tayo;
- (c) itawumema tisebenti tahlumende letibukene netindzaba tetifikinamtfwalo leticashwe liTiko kutsi tibe khona kumbe tihlanganyele emihlanganweni yayo; futsi 25
- (d) itawubeka emakomiti lakhiwe malunga ayo kutsi elekelele ekwenteni imisebenti yayo;
- (4) Lilunga leBhodi lekubhekiswe kulo esigabenincane (2)(k) na (l)— 30
- (a) litakuba lilunga sikhatsi lesiminyaka lemine, bese kutsi ngekuphela kwaleso sikhatsi liphindze livumeleke kutsi libekwe kanye kumbe kabili, ingce nje nangabe iNdvuna itawukhatsa umuntfu lotawungena esikhaleni lesingahle sivuleke ngekutsi ibeka umuntfu lotawungena kuso incenye yesikhatsi lesisasele sekuba sesikhundleni salelilunga lelo lowo muntfu lafakwa esikhundleni salo; 35
- (b) alingeke nganobe ngusiphi sikhatsi—
- (i) libe ngaleso sikhatsi kumbe esikhatsini lesitako ngumuntfu lowehluleka kukhokha tikweledi takhe futsi longeke aphindze akwati kutimela ngetinyawo takhe; 40
- (ii) limenyetelwe kumbe lake lamenyetelwa esikhatsini lesendlulile kutsi lingumuntfu longakaphili engcondvweni;
- (iii) libe butsakatsaka ngekwecndvo kumbe ngekwemtimba, loko lokutalivimbela kutsi lente kahle umsebenti walo;
- (iv) lilahlwe licala kwekugcina kumbe litfole sigwebo selwephulomtsetfo lesingakhokhelwa inhlawulo; 45
- (v) libe ngaleso sikhatsi kumbe esikhatsini lesitako, nesikhundla kutembusave; kumbe
- (vi) lisuswe kumbe lake lasuswa esikhundleni lesifuna umuntfu lowetsembekile ngendzaba yekutiphatsa kabi lokumayelana nebusela kumbe kukhwabanisa; 50
- (c) litawuyekela kuba lilunga—
- (i) ngalesikhatsi lishiya phansi;
- (ii) nangabe licelwa yiNdvuna kutsi alishiye phansi nangabe loko kutakuba nemphumela lomuhle; 55
- (iii) nangabe lehluleka kuya emihlanganweni mibili yeBhodi lelandzelanako, ngaphandle kwekutsi sicoliso salo semukelwe yiNdvuna; kumbe
- (iv) nangabe litakwemukwa kuba lilunga ngekumisa kwalomTsetfo; futsi
- (d) litawukhokhelwa lelo holo futsi lifaneleke kutfolo leto tinsitakalo kanye netikhangeto njengaloku kubekwe sikhatsi neskhatsi yiNdvuna ngemuva kwekubonisana nemCondzisijikelele kanye nangemvume yeNdvuna yetetiMali. 60

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(5) The *Board* may request the *Department* to provide it with the necessary administrative capacity and assistance.

(6) The *Board* may establish and operate through committees to carry out its functions.

(7) The *Minister* may dissolve the *Board* on such terms and conditions as he or she sees fit, provided that a new *Board* shall be convened within 90 calendar days. 5

(8) The members of the *Board* who are not public servants shall be entitled to such remuneration and reimbursements as the *Minister* may determine from time to time in consultation with the *Minister* of Finance.

(9) Subject to *this Act*, the *Board* shall operate and meet as *prescribed*. 10

Functions of Board

5. The *Board* shall advise the *Minister* in respect of—

- (a) the contents of *regulations* made in terms of *this Act*;
- (b) the formulation of policy pertaining to immigration matters;
- (c) the implementation of immigration policy by the *Department*; 15
- (d) the reviewing of a decision of the *Department* in terms of section 8 if and when requested by *Minister*;
- (e) such other matters relating to *this Act* on which the *Minister* may request advice.

Inter-departmental co-operation

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6. (1) The *Director-General* or his or her delegatee shall chair a liaison committee made up of senior employees representing the various departments which have functions relating to ports of entry.

(2) The liaison committee shall meet whenever necessary to discuss and agree on co-operation and co-ordination with regard to matters relating to the administration of ports of entry and the movement of goods and persons through ports of entry. 25

Regulation making

7. (1) The *Minister* shall have the power to make *regulations* called for, or conducive to, the implementation of *this Act* and in making *regulations* in terms of *this Act*, the *Minister* shall— 30

- (a) *publish* and table in Parliament his or her intention of adopting *regulations* specifying their subject matter and soliciting public comments during a period not shorter than 21 calendar days;
- (b) having considered public comments received, *publish* and table in Parliament draft *regulations* soliciting further comments during a period not shorter than 21 calendar days; and 35
- (c) *publish* the final *regulations* together with a summary of comments which have not been accommodated and the reasons for their rejection.

(2) Only subsection (1)(b) and (c) shall apply in respect of any *regulations* which *this Act* requires to be *prescribed* from time to time. 40

(3) The *Board* may request the *Minister* to—

- (a) reconsider any intended *regulations* prior to their promulgation; or
- (b) consider the need to adopt, repeal or amend *regulations*.

(4) Regulations shall be consistent with *this Act*, and shall not disregard the advice of the *Board* and public comments in an arbitrary or capricious manner: Provided that any regulation made in terms of this section shall be tabled within 30 days after its promulgation if Parliament is in session and if Parliament is in recess when the regulation is published, within 12 days after the resumption of the session. 45

(5) *IBhodi* ingacela *liTiko* kutsi liyibonelele ngelwati kanye nelusito lwetekuphatsa lokudzingekako.

(6) *IBhodi* ingasungula emakomiti futsi isebente ngawo ekwenteni imisebenti yayo.

(7) *INdvuna* ingayihlakata *IBhodi* ngaphansi kwaletu timeko kanye nemibandzela njengaloku yona ingakubona kufanele, ingce nje nangabe *IBhodi* lensha itawubitwa kungakapheli emalanga ekhalenda la-90. 5

(8) Emalunga *eBhodi* langesito tisebenti tahlumende atakuba nelilungelo lekutfolo lelo holo kumbe kubuyiselwa leto timali latisebentisile njengaloku *iNdvuna* ingakubeka ngesikhatsi nesikhatsi ngemuva kwekubonisana ne*Ndvuna* yetetiMali.

(9) Ngekulandzela *lomTsetfo*, *IBhodi* itawusebenta futsi ihlangane njengaloku 10 kumisiwe.

Imisebenti ye*Bhodi*

5. *IBhodi* itakweluleka *iNdvuna* macondzana—

- (a) naloku lokucuketfwe *timiso* letentiwe ngekumisa kwalom*Tsetfo*;
- (b) nekwakhiwa kwetinchubomgomo letiphatselene netindzaba 15 tetifikinamtfwalo;
- (c) nekusetjentiswa kwenchubomgomo yetetifikinamtfwalo *liTiko*;
- (d) kubuyeketwa kwesincumo seli*Tiko* ngekumisa kwesigaba 8. nangabe futsi nangalesikhatsi icelwe yi*Ndvuna*; kanye
- (e) nakuleto letinye tindzaba letiphatselene nalom*Tsetfo* *iNdvuna* lengahle icele 20 kuto kwelulekwa.

Kubambisana kwematiko lehlukahlukene

6. (1) *UmCondzisijikelele* kumbe sitfunywa sakhe utakuba ngusihlalo wekomiti yekuchumanisa leyakhiwe tisebenti tahlumende letisezingeni lelisetulu letimelele ematiko lehlukahlukene lenta imisebenti lophatselene netikhumulo tekungena eveni. 25

(2) Ikomiti yekuchumanisa itawuhlangana nobe nini nakunesidzingo saloko kuze idzingidze futsi ivumelana ngekubambisana kanye nekusebentisana macondzana netindzaba letiphatselene nekuphatfwa kwetikhumulo tekungena eveni kanye nekuhamba kwemphahla kanye nebantfu kwendlula etikhumulweni tekungena eveni.

Kwakhiwa kwetimiso

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7. (1) *INdvuna* itakuba nemandla ekwakha *timiso* letidzingekako kumbe letifanelekile ekusebentiseni lom*Tsetfo* kanye nasekukwakheni *timiso* ngekumisa kwalom*Tsetfo* ngekutsi—

- (a) ikhiphe futsi ibeke etafuleni ePhalamende injongo yayo yekwemukela *timiso* letawugagula ingcikitsi yato futsi lesimema imibono yemphakatsi 35 ngekuhamba kwesikhatsi lesingasingaphansi kwemalanga ekhalenda la-21;
- (b) ngemuva kwekubukisisa imibono yemphakatsi leyemukelwe, ikhiphe futsi ibeke etafuleni ePhalamende luhlaka lwetimiso futsi imeme leminywe imibono yemphakatsi ngekuhamba kwesikhatsi lesingasingaphansi kwemalanga ekhalenda la-21; futsi 40
- (c) ikhiphe *timiso* tekugcina kanye kanye nemibono lefinyetiwe lengakemukelwa kanye netizatfu tekungemukelwa kwayo lemibono.

(2) Kutawusebenta kuphela sigabancane (1)(b) na (c) macondzana nanobe ngutiphi *timiso* lom*Tsetfo* lodzinga kutsi *timiswe* ngesikhatsi nesikhatsi.

(3) *IBhodi* ingacela *iNdvuna* kutsi—

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- (a) icabangisise kabusha nobe ngutiphi *timiso* lekuhloswe kutsi tentiwe ngembikwekumenyetelwa kwato; kumbe
- (b) icabangisise sidzingo sekwemukela, kucitsa kumbe kugucula *timiso*.

(4) *Timiso* atinakwehluka kepha titawuhambisana nalom*Tsetfo*, futsi atinawushaya indiva loko lokumibono ye*Bhodi* kanye neyemphakatsi ngendlela yekungacabangeli timvo talabanye kumbe yekutsatsa ngemawala: Akwateke noko kutsi nobe ngusiphi simiso lesakhiwe ngekumisa kwalesigaba sitawubekwa etafuleni kungakapheli sikhatsi lesimalanga la-30 ngemuva kwekumenyetelwa kwaso nangabe iPhalamende ihleti, kantsi nangabe iPhalamende itsetse likhefu, sitawubekwa etafuleni ngalesikhatsi leso simoso sikhishwa, kungakapheli sikhatsi lesingemalanga la-12 ngemuva kwecalisa 55 kwekuhlala kwePhalamende.

Adjudication and review procedures

8. (1) Before making a determination adversely affecting a person, the *Department* shall notify the contemplated decision and related motivation to such affected person and give such person at least 10 calendar days to make representations, after which the *Department* shall notify such person that either such decision has been withdrawn or modified, or that it shall become effective, subject to subsection (2). 5

(2) Within 20 calendar days of its notification, the person aggrieved by an effective decision of the *Department* may appeal against it—

- (a) to the *Director-General*, who may reverse or modify it within 10 calendar days, failing which the decision shall be deemed to have been confirmed; or 10
- (b) within 20 calendar days of modification or confirmation by the *Director-General*, if any, to the *Minister*, who may reverse or modify it within 20 calendar days, failing which the decision shall be deemed to have been confirmed, and be final, provided that in exceptional circumstances or when such person stands to be deported as a consequence of such decision— 15
 - (i) the *Minister* may extend such deadline; and
 - (ii) at the request of the *Department*, the *Minister* may request such person to post a bond to defray his or her *deportation* costs, if applicable; or
- (c) within 20 calendar days of modification or confirmation by the *Minister*, if any, to a *Court*, which may suspend, reverse or modify it in accordance with its rules. 20

(3) If not appealed in terms of subsection (2), a decision of the *Department* is final, subject to section 37 of *this Act*.

(4) Any person adversely affected by a decision of the *Department* shall be notified in writing of his or her rights under this section and other *prescribed* matters, and may not be deported before the relevant decision is final. 25

(5) Notwithstanding subsection (1), as soon as notified to the person concerned in terms of subsection (4), the decision of an immigration officer refusing entry into the *Republic* shall be effective for the purpose of subsection (1), and final for purposes of *deportation*, but subject to subsections (2) and (3). 30

ADMISSION AND DEPARTURE**Admission and departure**

9. (1) Subject to *this Act*, no person shall enter the *Republic* at a place other than a *port of entry*.

(2) Subject to *this Act*, a *citizen* or a *resident* shall be admitted, provided that he or she identifies himself or herself as such in the *prescribed* manner and, in the case of a *resident*, the immigration officer records his or her entrance. 35

(3) No person shall leave the *Republic*—

- (a) unless in possession of a *passport*, or a certificate issued by the *Department* upon *application* in lieu thereof; 40
- (b) unless, if he or she is a person under the age of 16 years who does not hold a *passport*, he or she is accompanied by his or her parent who holds a *passport* in which his or her name was entered in terms of the provisions of the South African Passports and Travel Documents Act, 1994 or on behalf of any government or international organisation recognised by the Government of the *Republic*; and 45
- (c) except at a *port of entry*, unless—

Tinchubo tekulalelwa kwetikhalo kanye netekubuyeketa

8. (1) Ngembikwekwenta sincumo le umphumela waso utakuba mubi emntfwini lotsite, *liTiko* litakwatisa lowo muntfu lotsintsekako ngalesincumo lesicatjangelwako kanye netizatfu taloko futsi linikete lowo muntfu lokungenani emalanga ekhalenda la-10 kutsi avakalise umbono wakhe, lekutakutsi emvakwaloko *liTiko* bese latisa lowo muntfu kutsi leso sincumo sihocisiwe kumbe siguculiwe, kumbe kutsi sitawusebenta, ngekulandzela sigabancane (2). 5

(2) Kungakapheli emalanga ekhalenda la-20 sincumo satsiwe, lowo muntfu lophatseke kabi ngenca yemphumela wesincumo lesisebentako *seliTiko* angenta sikhalo lesiphikisa leso sincumo— 10

(a) asibhekise kum*Condzisijikelele* yena lonako kubuyisela emuva kumbe kugucula leso sincumo kungakapheli emalanga ekhalenda la-10, lokutakutsi loko nakwehlulekile leso sincumo sitsatfwe kutsi sicinisiwe; kumbe

(b) kutakutsi kungakapheli emalanga ekhalenda la-20 leso sincumo siguculiwe kumbe sicinisiwe ngum*Condzisijikelele*, nangabe kwenteke njalo, asibhekise *eNdvuneni* yona lenako kusibuyisela emuva kumbe kusigucula kungakapheli emalanga ekhalenda la-20, lokutakutsi loko nakwehlulekile leso sincumo sitsatfwe kutsi sicinisiwe futsi singumancamula jucu, ingce nje nangabe etimekweni letingakavami kumbe nangabe lowo muntfu ulindzeleke kutsi *abuyiselwe eveni lakubo* ngesizatfu saleso sincumo— 20

(i) *iNdvuna* ingasengeta leso sikhatsi lesililanga lekugcina; futsi

(ii) ngalesikhatsi *liTiko* licela kutsi kwentiwe njalo, *iNdvuna* ingacela lowo muntfu kutsi akhokhe ibhondi yekukhokhela tindleko takhe *tekubuyisela umuntfu eveni lakubo*, nangabe loko kufanele kutsi kwentiwe, kumbe

(c) kungakapheli emalanga ekhalenda la-20 leso sincumo siguculiwe; kumbe sicinisiwe yi*Ndvuna*, nangabe kwenteke njalo, asibhekise *eKhotso* lona lelingenta kutsi leso sincumo silengiswe, sibuyiselwe emuva kumbe siguculwe ngekuhambisana nemitsetfo yeli*Khotso*. 25

(3) Nangabe kungakentiwa sikhalo njengekumisa kwesigabancane (2), sincumo *seliTiko* sitakuba ngumancamula jucu ngekuhambisana nalomtsetfo. 30

(4) Nobe ngubani umuntfu lophatseke kabi ngenca yemphumela wesincumo *seliTiko* utawubhalelwa atiswe ngemalungelo akhe ngaphansi kwalesigaba kanye nangaletinye tindzaba letimisiwe, futsi angeke *abuyiselwe eveni lakubo* ngembikwekutsi leso sincumo lesicondzene naye sesibe ngumancamula jucu.

(5) Akusho lutfo loko lokushiwo sigabancane (1), masinyane ngemuva kwekwatiswa kwalowo muntfu locondzene naloko ngekumisa kwesigabancane (4), sincumo salesisebenti sahumumende lesibukene netindzaba tetifikinamtfwalo lesalela lowo muntfu kungena *eRiphabliki* sitakuba nemandla ngetinjongo tesigabancane (1), futsi sitakuba ngumancamula jucu ngetinjongo *tekubuyisela umuntfu eveni lakubo*, ngekulandzela sigabancane (2) na(3). 40

KUNGENISWA KANYE NEKUPHUMA**Kungeniswa kanye nekuphuma**

9. (1) Ngaphansi kwalom*Ttsetfo*, akukho muntfu lotawungena *eRiphabliki* kulenye indzawo ngaphandle kwasesikhumulweni sekungena *eveni*.

(2) Ngaphansi kwalom*Ttsetfo*, *sakhamuti* kumbe *umhlali* utawungeniswa, ingce nje nangabe atisho kutsi *usakhamuti* kumbe ungumhlali ngendlela lemisiwe futsi, endzabeni yemhlali, nangabe *sisebenti sahumumende lesibukene netifikinamtfwalo* sikubhalile phansi kungena kwakhe. 45

(3) Akukho muntfu lotawuphuma *eRiphabliki*—

(a) ngaphandle kwekutsi unepasipoti kumbe sitifiketi loko lokukhishwe *liTiko* ngemuva kwekwentiwa kwesicelo saloko; 50

(b) ngaphandle kwekutsi, nangabe lowo kungumuntfu longephansi kweminyaka yebudzala le-16 longenayo *ipasipoti*, uhamba nemtali wakhe lonepasipoti leneligama lalowo muntfu ngekumisa kwetibonelelo temTsetfo wemaPasipoti kanye netiNcwadzi tekuHamba kwaseNingizimu Afrika, 1994, kumbe ahamba egameni lanobe ngumuphi humumende kumbe inhlango yemave ngemave leyemukelekile kuHumumende we*Riphabliki*; futsi 55

(c) ngaphandle kwekutsi uphuma esikhumulweni sekungena *eveni*, ngaphandle kwekutsi—

- (i) in possession of a certificate by the *Department* granting permission upon *application* to leave the *Republic* at a place other than a *port of entry* within a certain period not exceeding six months at a time, provided that for good cause an immigration officer may withdraw such permission; or 5
- (ii) exempted by the *Minister*, as he or she deems fit, on recommendation of the *Director-General*, which exemption may be withdrawn by the *Director-General* at any time; and
- (d) unless, in the case of a *resident*, the *departure* is recorded by an immigration officer. 10
- (4) A *foreigner* may only enter the *Republic*—
 - (a) by producing to an immigration officer his or her *passport* to be valid for no less than 30 days after the expiry of the intended stay, and
 - (b) if issued with a valid *temporary residence*, as set out in this Act, and may only depart as set out in this Act. 15

TEMPORARY RESIDENCE

Temporary residence permits

- 10. (1) Upon *admission*, a *foreigner* may enter and sojourn in the *Republic* only if in possession of a *temporary residence*.
- (2) Subject to this Act, upon *application* and upon *prescribed* examination at the *port of entry*, one of the *temporary residences* set out in sections 11 to 23 may be issued to a *foreigner*. 20
- (3) If issued outside the *Republic*, a *temporary residence* is deemed to be of force and effect only after an *admission*.
- (4) A *temporary residence* is to be issued on condition that the holder is not or does not become a prohibited or an undesirable person. 25
- (5) For good cause, as *prescribed*, the *Department* may attach reasonable individual terms and conditions to a *temporary residence*.
- (6) Subject to this Act, a *foreigner* may change his or her *status* while in the *Republic*.

Visitor's Permit 30

- 11. (1) A visitor's permit may be issued by the *Department* in respect of a *foreigner* who—
 - (a) holds a *visa*; or
 - (b) is a *citizen* of a *foreign state* *prescribed* from time to time and provides the financial or other guarantees *prescribed* from time to time in respect of his or her *departure*, 35
 provided that such permit—
 - (i) cannot exceed three months and upon *application* may be renewed by the *Department*, or
 - (ii) may be issued by the *Department* upon *application* for any period not to exceed three years to a *foreigner* who has satisfied the *Department* that he or she controls sufficient available financial resources, which may be *prescribed* from time to time, and is engaged in the *Republic* in— 40
 - (aa) academic sabbaticals;
 - (bb) voluntary or charitable activities; 45
 - (cc) research; or
 - (dd) other *prescribed* activities and cases.
- (2) The holder of a visitor's permit may not conduct *work*.

- (i) unesitifiketi lesikhishwe *liTiko* lesimnike imvume ngalesikhatsi enta *sicelo* yekutsi akuphume eNingizimu Africa kulenye indzawo lokungesiyo *sikhumulo sekungena eveni* kungakapheli sikhatsi lesingengi tinyanga letisitfupha ngaleso naleso sikhatsi afuna kuphuma, ingce nje nangabe *sisebenti sahumumende lesibukene netifikinamtfwalo* sitawukwati kuyihocisa leyo mvume nangabe kunesizatfu lesivakalako sekutsi sente njalo; kumbe 5
- (ii) ucoletwe *yiNdvuna*, njengaloku yona ikubona kufanele, ngemuva kwesincomo lesentiwe ngumCondzisijikelele, loko kucolelwa lokungahociswa ngumCondzisijikelele nganobe ngusiphi sikhatsi; nafutsi 10
- (d) ngaphandle kwalapho, endzabeni yemhlali, lokuphuma loko kubhaliwe phansi *sisebenti sahumumende lesibukene netifikinamtfwalo*.
- (4) *Sichamuki* singangena eRiphabliki kuphela—
 - (a) ngekutsi sikhombise *sisebenti sahumumende lesibukene* netindzaba tetifikinamtfwalo *ipasipoti* yaso letawusebenta sikhatsi lesingesingaphansi kwemalanga la-30 ngemuva kwekuphela kwesikhatsi lebesitimisele kuhlala sona; futsi 15
 - (b) nangabe sinikwe imvume yekuhlala sikhashana lesebentako, njengaloku kubekwe kulomTsetfo, futsi nangabe singaphuma kuphela njengaloku kubekiwe kulomTsetfo. 20

KUHLALA SIKHASHANA

Timvume tekuhlala sikhashana

- 10. (1) Ngemuva kwekungeniswa, *sichamuki* singangena futsi sihambe sivakashe kwesikhashana eRiphabliki kuphela nangabe sinemvume yekuhlala sikhashana. 25
- (2) Ngaphansi kwalomTsetfo, ngalesikhatsi umuntfu enta *sicelo* nafutsi ngemuva kwekutsi entiwe luhlolo lolumisiwe *esikhumulweni sekungena eveni*, yinye yaletimvume letendlalwe etigabeni 11 kuye ku 23 ingakhishelwa *sichamuki*.
- (3) Nangabe lemvume *ikhishwe* ngaphandle kweRiphabliki, imvume yekuhlala sikhashana itsatfwa kwekutsi inemandla futsi iyasebenta kuphela ngemuva kwekungeniswa kwemnikati wayo eRiphabliki. 30
- (4) Imvume yekuhlala sikhashana itawukhishwa ngaphansi kwemibandzela letsi loyo mnikati akasuye futsi angeke abe ngumuntfu lowencatjelwe kumbe longakemukeleki.
- (5) Ngekufisa kwenta sento lesihle, njengaloku kumisiwe, *liTiko* lingatsekeletela timiso kanye nemibandzela lokuvakalako lokucondzene nemvume yekuhlala yesikhashana yemuntfu mumbé. 35
- (6) Ngaphansi kwalomTsetfo, *sichamuki* singasigucula simo sesichamuki eveni saso ngalesikhatsi siseRiphabliki.

Imvume yesivakashi

- 11. (1) Imvume yesivakashi ingakhishwa *liTiko* iyikhiphele *sichamuki*— 40
 - (a) lesingumnikati wevisa kumbe;
 - (b) lesisakhmuti sakulelinye live lemiswe sikhatsi nesikhatsi kanye nalesikhipha sicinisekiso sekutsi sona sinemitfimbolusito yetetimali kumbe salokunye lesimswé sikhatsi nesikhatsi macondzana nekuphuma kwaso, ingce nje leyo mvume— 45
 - (i) ayinakwendlula tinyanga letintsatfu futsi itawuvuselelwa *liTiko* ngemuva kwekwentiwa kwesicelo; kumbe
 - (ii) itawukhishwa *liTiko* ngalesikhatsi kwentiwa *sicelo* kutsi isebente nobe sikhatsi lesingakanani lesingendluli iminyaka lemitsatfu inikwe *sichamuki* lesenetise *liTiko* kwekutsi sona siphetse imitfimbolusito yetetimali leyenele lengatfolakala, leyo lengamiswa ngesikhatsi nesikhatsi, kanye nekutsi sona lapha eRiphabliki— 50
 - (aa) sitsetse likhefu letemfundvo;
 - (bb) senta imisebenti yesihle kumbe yekusita labanye mahhala;
 - (cc) senta lucwaningo; kumbe 55
 - (dd) senta leminyé imisebenti kanye netintfo lokumisiwe.
- (2) Umnikati wemvume yesivakashi akukafaneli ente *umsebenti*.

(3) An *illegal foreigner* receiving a visitor's permit shall comply with any terms and conditions which may be *prescribed* from time to time and provide the *prescribed* deposit to be forfeited to the *Department* in case of his or her non-compliance with *this Act*.

(4) A visitor's permit may be issued for more than one entry if multiple entries into the *Republic* over a period not exceeding three months are requested by the person concerned. 5

(5) Special financial and other guarantees may be *prescribed* in respect of the issuance of a visitor's permit to certain classes of *foreigners prescribed* from time to time.

Diplomatic permit

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12. (1) A diplomatic permit may be issued by the *Department*, or by the *Department* of Foreign Affairs under delegation and in the *prescribed* manner and form and as directed by the *Department*, to—

- (a) an ambassador, a minister of a *foreign state*, a career diplomat or consular officer of a foreign government recognized de jure by the South African Government, or a representative of an international organisation *prescribed* from time to time, who is accepted by the *Minister* of Foreign Affairs; 15
- (b) upon a basis of reciprocity, other officials or employees of a foreign government or international organisation contemplated in paragraph (a);
- (c) a member of the *immediate family* of the *foreigners* contemplated in paragraphs (a) and (b); 20
- (d) upon a basis of reciprocity, attendants, servants and personal employees of the *foreigners* contemplated in paragraphs (a) to (c); and
- (e) other *prescribed foreigners* who are dignitaries of a *foreign state*.

(2) The holder of a diplomatic permit may not conduct *work*, provided that the *foreigners* referred to in subsection (1)(c) may combine such permit with a separately issued *work* permit. 25

Study permit

13. (1) A study permit may be issued to a *foreigner* intending to study in the *Republic* for longer than three months by— 30

- (a) the *Department*, as *prescribed*, or, at the option of the applicant,
- (b) the *Department* through the registrars office or a designated official of an institution of learning where the *foreigner* intends to study, provided that such institution—
 - (i) has been approved by and is in good standing with the *Department*; 35
 - (ii) certifies that it has received guarantees to its satisfaction that such *foreigner's* tuition fees will be paid;
 - (iii) has received the *prescribed* guarantees that such *foreigner* will have sufficient means to support himself or herself while in the *Republic*;
 - (iv) in the case of a minor, provides the name of a person present in South Africa who is, or has accepted to act, as such minor's guardian while in the *Republic*; 40
 - (v) undertakes to provide a *prescribed* periodic certification that such *foreigner* is satisfactorily performing his or her curriculum of study; and
 - (vi) undertakes to notify the *Department* when such *foreigner* has completed his or her studies, or is no longer performing them satisfactorily. 45

(3) *Sichamuki lesingekho emtsetfweni* lesitfola imvume yesivakashi sitawutfobela nobe ngutiphi timiso kanye nemibandzela lokungamiswa *ngesikhatsi nesikhatsi* futsi sitawukhokha idiphozi *lemisiwe* letawudliwa *liTiko* nakungenteka kutsi *lesichamuki* singawutfobeli *lomTsetfo*.

(4) Imvume yesivakashi ingakhishelwa kutsi ingenise umnikati wayo tikhatsi letingetulu kwesikhatsi sinye, nangabe kudzingekile kutsi umnikati wayo *angeniswe* eNingizimu Afrika ngalokuphindzaphindzile ngekuhamba kwesikhatsi lesingasingaphansi kwetinyanga letintsatfu nguloyo muntfu locondzene naloko.

(5) Kwetsembisa kwemuntfu kutsi utawukhokha timali kanye nekutsi utakwenta lokunye lokutsite *kungamiswa* mayelana nekukhishwa kwemvume yesivakashi lenikwa tigaba letitsite *tetichamuki* letimiswe *ngesikhatsi nesikhatsi*.

Imvume yemancusa

12. (1) Imvume yemancusa ingakhishwa *liTiko* kumbe *liTiko* letiNdzaba tangaPhandle nangabe litfunyiwe, ngendlela lemisiwe kanye nasefomini lelimisiwe nafutsi njengaloku kulayetwe *liTiko*—

- (a) ikhishelwe lincusa, indvuna *yakulelinye live*, umuntfu lolincusa imphilo yakhe yonkhe kumbe sisebenti sahumumende lesisebenta ehhovisi lelincusa lahumumende *wakulelinye live* lelemukeliwe nguHulumende waseNingizimu Afrika njengekusho kwemtsetfo, kumbe ummeleli wenhlangano yemave ngemave lemisiwe *ngesikhatsi nesikhatsi* lowemukelwe yiNdvuna yetiNdzaba tangaPhandle;
- (b) ikhishwe ngesizatfu sekutsi tandla tiyagezana macondzana naletinye tikhulu kumbe bantfu labacashwe nguhulumende wakulelinye live kumbe inhlangano yemave ngemave lecatjangelwako kupharagrafu (a);
- (c) ikhishelwe lilunga *lemndeni losondzele wetichamuki* leticatjangelwako kupharagrafu (a) na (b);
- (d) ikhishwe ngesizatfu sekutsi tandla tiyagezana yakhishelwa basiti, tisebenti tasendlini kanye nebantfu labacashwe ngito matfupha *tichamuki* lekukhulunywa ngato kupharagrafu (a) kuya ku (c); futsi
- (e) ikhishelwe letinye *tichamuki* letimisiwe letititanyiswa *tembuso wakulelinye live*.

(2) Umuntfu longumnikati wemvume yemancusa akukafaneli kutsi ente *umsebenti*, ngaphandle kwekutsi *letichamuki* lekubhekiswe kuto esigabenincane (1)(c) tiyayihlanganisa leyo mvume kanye nemvume *yemsebent* lekhishwe yodvwana.

Imvume yekufundza

13. (1) Imvume yekufundza ingakhishelwa *sichamuki* lesicondze kufundza eRiphabliki sikhatsi lesingetulu kwetinyanga letintsatfu ngekutsi—

- (a) ikhishwe *liTiko*, njengaloku kumisiwe, nangabe umentisicelo atikhetsela loko; futsi
- (b) ikhishwe *liTiko* ngelihhovisi lembhalisi wesikhungo semfundvo kumbe sikhulu lesitfunyiwe walapho *lesichamuki* lesitimisele kufundza khona, ingce nje nangabe leso sikhungo-*lesichamuki* lesitimisele kufundza khona, ingce nje nangabe leso sikhungo—
 - (i) sivunyelwe *liTiko* futsi sibhalisiwe njengalesineligama lelihle emehlweni *eliTiko*;
 - (ii) sitawufakazela kutsi sitemukele titsembiso letisishiye senetisekile kwekutsi timali tekukhokhela tindleko tekufundza *talesichamuki* titawukhokhwa;
 - (iii) sitemukela leto titsembiso letimisiwe tekutsi leso *sichamuki* sitakuba netindlela letenele tekutiphilisa ngalesikhatsi siseRiphabliki;
 - (iv) endzabeni yemuntfu lonsengumntfwana, sitawuniketa ligama lemuntfu loseNingizimu Afrika lotsatfwa njengemondli walesichamuki kumbe lovumile kutsi utakuba ngumondli waso;
 - (vi) sitakwetsembisa kuniketa sitifiketi lesimisiwe lesikhishwa ngesikhatsi nesikhatsi lesisho kutsi leso *sichamuki* sichuba ngalokwenetisako eluhlelweni lwaso lwemfundvo; futsi
 - (vi) sitakwetsembisa kwatisa *liTiko* nangabe leso *sichamuki* sesiticedzile tifundvo taso kumbe nangabe asisachubi ngalokwenetisako; kumbe

(2) When so requested by, and after consultation with, the *Department* of Education, the *Department* shall determine an ad hoc fee for the issuance of study permits in respect of institutions publicly funded or subsidised.

(3) A study permit does not entitle the holder to conduct *work*, provided that—

- (a) a study permit holder may undertake part-time *work* for a period not exceeding the *prescribed* period, if the permit holder is attending a higher education institution; 5
- (b) the *work* referred to in paragraph (a) may include temporary or full time *work* during the academic vacation periods.
- (c) the *Department* may, in appropriate cases, authorise the holder of a study permit to conduct *work* as practical training in a field related to that of his or her studies. 10

Treaty permit

14. (1) A treaty permit may be issued to a *foreigner* conducting activities in the *Republic* in terms of an international agreement to which the *Republic* is a party. 15

(2) The treaty permit may be issued by—

- (a) the *Department*, as *prescribed*; 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— 20
 - (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 25
 - (iii) the requirements, procedures and forms for the issuance of such permit are *prescribed*.

Business permit

15. (1) A business permit may be issued by the *Department* to a *foreigner* intending to establish, or invest in, a business in the *Republic* in which he or she may be employed, 30 and to the members of such *foreigner's immediate family* provided that—

- (a) such *foreigner* invests the *prescribed* financial or capital contribution in such business;
- (b) the contribution referred to in paragraph (a) be part of the intended book value of such business; 35
- (c) a *chartered accountant* certifies compliance with the provisions of *this Act*, and
- (d) such *foreigner* has undertaken to comply with any relevant registration requirement set out in any law administered by the South African Revenue Service. 40

(2) The holder of a business permit may conduct *work*.

(3) The *Department* may reduce or waive the capitalization requirements referred to in subsection (1)(a) for businesses which are *prescribed* from time to time to be in the national interest or when so requested by the *Department* of Trade and Industry.

(4) The holder of a business permit shall cause the certification referred to in subsection (1)(c) to be renewed within 24 months of the issuance of the permit, and within every two years thereafter. 45

(5) A business permit may be issued for more than one entry to a person if multiple entries into the *Republic* by that person over a period of time are necessary for that person to conduct the business in question effectively. 50

(2) Nangabe *liTiko* liceliwe nafutsi ngemuva kwekubonisana neliTiko letemFundvo, *liTiko* litawubeka imali yangaso sona leso sikhatsi yekukhishwa kwetimvume tekufundza letimacondzana netikhungo temfundvo letitfoli tonkhe timali tato kuhulumende kumbe letelekelelwa nguhulumende ngetimali, leyo mali letawufakwa esiKhwameni semGcinimafa waVelonkhe.

(3) Imvume yekufundza ayimgunyati umnikati wayo kutsi ente *umsebeni*, ingce nje kwateka kutsi—

- (a) umnikati wemvume yekufundza angawenta *umsebeni* wencenye yesikhatsi (part-time) sikhatsi lesingendluli sikhatsi lesimisiwe, nangabe umnikati walemvume afundza esikhungweni semfundvo lephakeme;
- (b) *umsebeni* lekubhekiswe kuwo kupharagrafu (a) ungafaka ekhatsi *umsebeni* wesikhashana kumbe wesikhatsi lesigcwele (full-time) ngesikhatsi sekutsatsa likhefu etifundweni; futsi
- (c) *liTiko*, etindzabeni letifanelekile, lingagunyata umnikati wemvume yekufundza kutsi ente *umsebeni* lolucecesho lwekutibambela ngetandla emsebenini losenzelene netifundvo takhe.

Imvume yesivumelwano

14. (1) Imvume yesivumelwano ingakhishelwa *sichamuki* lesenta *umsebeni eRiphabliki* ngekumisa kwesivumelwano semave ngemave *iRiphabliki* nayo lesisayinile.

(2) Imvume yesivumelwano ingakhishwa—

- (a) *liTiko*, kumbe
- (b) *liTiko* letiNdzaba tangaPhandle kumbe leminywe *imitimba yemBuso* lenemtfwalo wekwenta kutsi letivumelwano lekukhulunywa ngato tiyasebenta, ingce nje kwateka kutsi—
 - (i) imininingwane lemayelana nekwehluleka kwaleso *sichamuki* kutfobela timeko kanye nemibandzela kwemvume kanye nekuhamba kuleli nasicelwa kutsi sente njalo kutakwendluliselwa *eTikweni*;
 - (ii) *umtimba weMbuso* locondzene naloku wenetisa *liTiko* kwekutsi, ngaphansi kwaletu timeko, unemandla ekwenta lowo msebeni; futsi
 - (iii) *kumiswa* tidzingakalo, tinchubo kanye nemaformu kwekwenta kutsi kukhishwe leyo mvume.

Imvume yebhizimisi

15. (1) Imvume yebhizimisi ingakhishwa *liTiko* inikwe *sichamuki* lesicondze kucalisa ibhizimisi kumbe kutsalisa imali ebhizimisini *eRiphabliki* lapho sona sitawusebenta khona kanye nemalunga *emndeni losondzele* waleso *sichamuki*, ingce nje kwateka kutsi—

- (a) leso *sichamuki* sitalisa timali kumbe samba sekucalisa ibhizimisi lesiyifake kuleyo bhizimisi;
- (b) lemali lekubhekiswe kuyo kupharagrafu (a) itakuba yincenye yentsengo yasebhukwini leyo bhizimisi letawubita yona;
- (c) *umbhalitimali lobhalisiwe* utawufakazelisa kutsi tibonelelo talomTsetfo titfotjelwe; nekutsi
- (d) leso *sichamuki* setsembisile kutsi sitawutfobela nobe ngutiphi tidzingakalo tekubhaliswa letihambelana naloko letendlalwe kunobe ngumuphi umtsetfo losetjentiswa bemSebeni waMalingena waseNingizimu Afrika.

(2) Umnikati wemvume yebhizimisi angawenta *umsebeni*.

(3) *LiTiko* linako kunciphisa kumbe kungatibiti tidzingakalo tekufaka samba sekucalisa ibhizimisi kuleyo bhizimisi lekubhekiswe kuto esigabenincane (1)(a), macondzana nemabhizimisi lamiswe ngesikhatsi nesikhatsi njengalawo latsatfwa kwekutsi alusito esiveni kumbe ngalesikhatsi *liTiko* licelwa *liTiko* letekuHweba netiMboni kutsi lente njalo.

(4) Umnikati wemvume yebhizimisi utawubangela kutsi lokufakazela lekubhekiswe kuko esigabenincane (1)(c) kuvuselelwe kungakendluli tinyanga leti-24 lemvume ikhishiwe, nafutsi kungakendluli leyo naleyo minyaka lemibili ngemuva kwaloko.

(5) Imvume yebhizimisi ingakhishelwa kutsi kungenwe ngayo kanyenti ikhishelwe umuntfu nangabe kungena kwalowo muntfu *eRiphabliki* aphindzaphindza ngekuhamba kwesikhatsi kudzingekile kutsi lowo muntfu akwati kuchuba ibhizimisi leukhulunywa ngayo ngendlela leshaya emhlokwini.

Crew permit

16. (1) A crew permit may be issued to a *foreigner* who is a member of the crew of a ship by—
- (a) the *Department*; as *prescribed*, or
 - (b) the *Department* through the *owner* of the *ship* carrying such member of the crew, provided that such *owner*—
 - (i) is in good standing with the *Department*;
 - (ii) has provided the *prescribed* financial guarantees to the *Department* to ensure compliance of such *foreigner* with the provisions of *this Act* and of his or her permit; and
 - (iii) accepts to be responsible for a *prescribed* fine, should the *foreigner* fail to honour the terms of such permit.
- (2) A crew permit may be issued on condition that the holder agrees to refrain from moving beyond a predetermined area.
- (3) The holder of a crew permit may not conduct *work*.

Medical treatment permit

17. (1) A medical treatment permit may be issued to a *foreigner* intending to receive medical treatment in the *Republic* for longer than three months by—
- (a) the *Department*, as *prescribed*, or
 - (b) the *Department* through the registrars office or a designated official of an institution where the *foreigner* intends to receive treatment, provided that such institution—
 - (i) has been approved by and is in good standing with the *Department*;
 - (ii) certifies that it has received guarantees to its satisfaction that such *foreigner's* treatment costs will be paid;
 - (iii) in the case of a minor, provides the name of a person present in South Africa who is, or has accepted to act, as such minor's guardian while in the *Republic* or certifies that such minor will be accompanied by a parent or guardian to the *Republic*;
 - (iv) undertakes to provide a *prescribed* periodic certification that such *foreigner* is under treatment; and
 - (v) undertakes to notify the *Department* when such *foreigner* has completed his or her treatment.
- (2) When so requested by, and after consultation with, the *Department* of Health, the *Department* shall determine an ad hoc fee for the issuance of medical treatment permits in respect of institutions publicly funded or subsidised.
- (3) A medical treatment permit does not entitle the holder to conduct *work*.

Relative's permit

18. (1) A relative's permit may be issued by the *Department* to a *foreigner* who is a member of the *immediate family* of a *citizen* or a *resident*, provided that such *citizen* or *resident* provides the *prescribed* financial assurance,
- (a) certified by a *chartered accountant*, or, at the applicant's option,
 - (b) to be corroborated by relevant documentation to be evaluated by the *Department* that he or she has the means available to support such *foreigner* for the requested duration of such permit, either personally or through the contribution of such *foreigner*.
- (2) The holder of a relative's permit may not conduct *work*.

Work permit

19. (1) A quota *work* permit may be issued by the *Department* as *prescribed* to a *foreigner* if the *foreigner* falls within a category determined by the *Minister* at least annually by notice in the *Gazette* after consultation with the *Ministers* of Labour and

Imvume yemuntfu losebenta emkhunjini

16. (1) Imvume yemuntfu losebenta emkhunjini ingakhishelwa lowo muntfu—
- (a) ikhishwe *liTiko*, njengaloku *kumisiwe*; kumbe
 - (b) ikhishwe ngumnikati wemkhumbi lotfwala bagibeli kumbe imphahla lotfwele lowo muntfu losebenta emkhunjini, ingce nje nangabe lowo *mnikati*— 5
 - (i) abhalisiwe njengaloneligama lelihle emehlweni *eliTiko*;
 - (ii) abe anikete *liTiko* tetsembiso tekutsi utawukhokha timali letimisiwe kuze acinisekise kwekutsi leso *sichamuki* siyatitfobela tibonelelo *talomTsetfo*; futsi
 - (iii) avuma kutsi nguye lotawukhokha inhlawulo *lemisiwe* nakungenteka *sichamuki* sehluleka kuhlonipha timiso taleyo mvume. 10
- (2) Imvume yemuntfu losebenta emkhunjini itawukhishwa ngaphansi kwemibandzela yekutsi umnikati wayo uyavuma kutsi utatibamba angendluleli ngale kwendzawo lekuvunyelwene ngayo kwasekucaleni kutsi akanakuyendlula.
- (3) Umnikati wemvume yemuntfu losebenta emkhunjini akufuneki ente *umsebenti*. 15

Imvume yekutfolela kwelashwa

17. (1) Imvume yekutfolela kwelashwa ingakhishelwa *sichamuki* lesicondze kutfolela kwelashwa e*Riphabliki* sikhatsi lesendlula tinyanga letintsatfu—
- (a) ikhishwe *liTiko*, njengaloku *kumisiwe*; kumbe
 - (b) ikhishwe *liTiko* ngelihhovisi lembhalisi kumbe sikhulu lesigunyatiwe sesikhungo lapho *sichamuki* sicondze kutfolela khona kwelashwa, ingce nje kwateka kutsi sikhungo— 20
 - (i) sivunyelwe futsi sineligama lelihle emehlweni *eliTiko*;
 - (ii) sitawufakazela kutsi sitemukele titsembiso ngekwentiseka tekutsi tindleko tekwelashwa kwaleso *sichamuki* titawukhokhwa; 25
 - (iii) endzabeni yemuntfu losengumtfwana, sitawuniketa ligama lemuntfu loseNingizimu Afrika lotsatfwa njengemondli walesi*sichamuki* kumbe lovumile kutsi utakuba ngumondli waso ngalesikhatsi sise*Riphabliki*, kumbe sifakazelise kutsi lowo muntfu losesengumntfwana utawupheleketelwa ngumtali kumbe umondli wakhe ngalesikhatsi eta e*Riphabliki*; 30
 - (iv) setsembisa kuniketa sitifiketi lesimisiwe lesiphuma ngemuva kwesikhatsi nesikhatsi lesishoko kutsi leso *sichamuki* siyelashwa; futsi
 - (v) setsembisa kwatisa *liTiko* nangabe leso *sichamuki* sekuphelile kwelashwa kwaso. 35
- (2) Nangabe *liTiko* licelwe *liTiko* leteMphilo nafutsi ngemuva kwekubonisana nalo, *liTiko* litawuncuma imali yangaso sona leso sikhatsi yekukhishwa kwetimvume tekutfolela kwelashwa lebekelwe tikhungo letitfolela tonkhe timali tato kuhulumende kumbe letelekelelwa nguhulumende ngetimali.
- (3) Imvume yekutfolela kwelashwa ayimgunyati umnikati wayo kutsi ente *umsebenti*. 40

Imvume yesihlobo

18. (1) Imvume yesihlobo ingakhishwa *liTiko* ikhishelwe *sichamuki* lesililungu lemndeni losendzele wesakhamuti kumbe *umhlali*, ingce nje nangabe leso sakhamuti kumbe *umhlali* baniketa sicinisekiso setimali lesimisiwe,
- (a) lesifakazeliswe ngumbhalitimali lobhalisiwe, kumbe, ngekutikhetsela kwementisicelo, 45
 - (b) lesitawufakazelwa tincwadi letiphatselene naloko latawuhlolwa *liTiko*, sekutsi sona lesakhamuti kumbe yena lomhlali banato tindlela tekondla leso *sichamuki* sikhatsi leyo mvume letawutsatsa sona, kungaba ngekwabo lucobo kumbe ngetimali letiwukhishwa ngiso lesi*sichamuki*. 50
- (2) Umnikati wemvume yetihlobo akufuneki kutsi ente *umsebenti*.

Imvume yemsebenti

19. (1) Imvume yemsebenti yemanani lancuniyiwe ingakhishwa *liTiko* njengaloku *kumisiwe* ikhishelwe *sichamuki* nangabe lesi*sichamuki* siwela ngekhatsi kwesigaba lesibekwe yi*Ndvuna* lokungenani ngemnyaka nemnyaka ngenothisi ku*Gazethi* ngemuva kwekubonisana neti*Ndvuna* teteSebenti netekuHweba netiMboni nafutsi 55

Trade and Industry and as long as the number of *work* permits so issued for such category does not exceed the quota determined in the notice.

(2) A general *work* permit may be issued by the *Department* to a *foreigner* not falling within a category contemplated in subsection (1) if the prospective *employer*—

- (a) satisfies the *Department* in the manner *prescribed* that despite diligent search he or she has been unable to employ a person in the *Republic* with qualifications equivalent to those of the applicant; 5
- (b) produces certification from a *chartered accountant* that the terms and conditions under which he or she intends to employ such *foreigner*, including salary and benefits, are not inferior to those prevailing in the relevant market segment for *citizens* and *residents*, taking into account applicable collective bargaining agreements and other applicable standards, as recorded by the *Department* of Labour, if any, provided that— 10
 - (i) a copy of such certification shall be conveyed to a *prescribed* office of the *Department* of Labour; and 15
 - (ii) such certification shall lapse if objected to for good cause by such office of the *Department* of Labour within 15 calendar days of its receipt;
- (c) has committed to notify the *Department* when such *foreigner* is no longer employed or is employed in a different capacity or role; and
- (d) has submitted a certification from a *chartered accountant* of the job description and that the position exists and is intended to be filled by such *foreigner*. 20

(3) A general *work* permit contemplated in subsection (2) shall lapse if, within six 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 and of the terms and conditions of his or her employment, including the job description. 25

(4) Subject to any *prescribed* requirements, an exceptional skills *work* permit may be issued by the *Department* to an individual of exceptional skills or qualifications and to those members of his or her *immediate family* determined by the *Department* under the circumstances or by regulation. 30

(5) An intra-company transfer *work* permit may be issued by the *Department* to a *foreigner* who is employed abroad by a business operating in the *Republic* in a branch, subsidiary or affiliate relationship and who by reason of his or her employment is required to conduct *work* in the *Republic* for a period not exceeding two years, provided that— 35

- (a) a *chartered accountant* acting on behalf of the *employer* of such *foreigner* certifies that the *employer* needs to employ such *foreigner* within the *Republic* and such *foreigner's* job description;
- (b) the *employer* undertakes that it will take adequate or *prescribed* measures to ensure that such *foreigner* will at all times comply with the provisions of *this Act*, and will immediately notify the *Department* if it has reason to believe otherwise; and 40
- (c) the *employer* furnishes the *prescribed* financial guarantees to defray *deportation* and other costs should such *foreigner* fail to depart when no longer allowed to sojourn in the *Republic*. 45

(6) The holder of an intra-company transfer *work* permit may conduct *work* only for the *employer* referred to in subsection (5) and in accordance with the job description and other elements contemplated in the certification referred to in subsection (5) or set out in his or her permit. 50

nakungabe linani letimvume *temsebenti* letikhishwe kanjalo tikhishelwe leso sigaba tingendluli emanani lancunywe kunothisi.

(2) Imvume *yemsebenti* leyetyelelele ingakhishwa *liTiko* ikhishelwe *sichamuki* lesingaweli ngekhatsi kwesigaba lesicatjangelwako esigabenincane (1) nangabe lomuntfu loyo lotimisele kuba *ngumcashi* waso—

- (a) enetisa *liTiko* ngendlela *lemisiwe* kutsi ngisho naloku afunile ngekutimisela akakwatanga kucasha umuntfu wase*Riphabliki* lonetimpawumfundvo letifanana naleto talomentisicelo;
- (b) aveta sifakazeliso lesibuya *kumbhalitimali lobhalisiwe* sekutsi letimeko kanye nemibandzela loko latimisele kucasha lowo *mchamuki* ngaphansi kwako, lokufaka ekhatsi liholo kanye netinsitakalo tebasebenti, akusingaphansi kwaloko lokutfolwa *takhamuti* kumbe *bahlali* labasebenta leyo misebenti, nawukhululuma ngetivumelwano letisebenta lapho letentiwa galesikhatsi basebenti sebandzawonye bakhulumisana khona nebacashi ngemaholo, tinsitakalo tebasebenti kanye naleminye imibandzela yekusebenta kanye nalamnye emazinga lasetjentiswa lapho, njengaloku kubhalwe phansi *liTiko* letebaSebenti, nangabe loko kukhona, ingce nje kwateka kutsi—
 - (i) ikhophi yaleso sifakazeliso itakwendluliselwa ehhovisi lelimisiwe *leliTiko* letebaSebenti; futsi
 - (ii) leso sifakazeliso sitawuphela nangabe siyaphikiswa ngulelo hhovisi *leliTiko* letebaSebenti ngesizatfu lesivakalako kungakapheli emalanga ekhalenda la-15 leso sifakazeliso semukeliwe;
- (c) atimisele kwatisa *liTiko* nangabe leso *sichamuki* singasasebenti kumbe sesisebenta kulesinye sikhundla kumbe kulomunye umsebenti; futsi
- (d) etfule sifakazeliso lesibuya *kumbhalitimali lobhalisiwe* lesichaza kutsi lomsebenti uyini nekutsi leso sikhundla sikhona, nekutsi leso sikhundla kuhloswe kutsi sitsatfwe nguleso *sichamuki*.

(3) Imvume *yemsebenti* leyetyelelele lecatjangelwa esigabenincane (2) itawuphela nangabe, kutsi kungakapheli tinyanga le-6 ikhishiwe, futsi kungapheli lowo nalowo mnyaka ngemuva kwaloko, umnikati wayo ehluleka kuniketa *liTiko* sifakazeliso lesichamuka *kumbhalitimali lobhalisiwe wemcashi* wakhe lesishoko kutsi sona sisacashiwe, futsi lesichaza timeko kanye nemibandzela yekucashwa kwaso, kufake ekhatsi inchazelo yekutsi lomsebenti uyini.

(4) Nge kubuka nobe ngutiphi tidzingakalo lesimisiwe, imvume *yemsebenti* yelikhono lelingakavami ingakhishwa *liTiko* liyinke umuntfu lonelikhono kumbe timphawumfundvo lokungakavami kanye nalawo malunga emndeni losendzele wakhe latawushiwo *liTiko* ngaphansi kwaletimeko leto kumbe ngaphansi kwetimiso.

(5) Imvume yekuntjintja bantfu ngekhatsi enkampanini ingakhishwa *liTiko* iyikhiphele *sichamuki* lesicashwe yibhizimisi lesebentela lapha e*Riphabliki* eveni langesheya egaleni lenkampani, inkampani lephetfwe ngulenyane kumbe inkampani leyincenye yalenyane, nafutsi lapho leso *sichamuki* ngenca yesizatfu sekucashwa kwaso sidzingakala kwekutsi sente *umsebenti eRiphabliki* sikhatsi lesingendluli iminyaka lemibili, ingce nje kwateka kutsi—

- (a) *umbalitimali lobhalisiwe* lotfunywe *ngumcashi* waleso *sichamuki* utawufakazelisa kwekutsi lomcashi unesidzingo sekucasha leso *sichamuki* ngekhatsi kwe*Riphabliki* futsi achaze kutsi lomsebenti waleso *sichamuki* uyini;
- (b) *umcashi* utakwetsembisa kutsi utawutsatsa tinyatselo letenele kumbe letimisiwe tekucinisekisa kutsi leso *sichamuki* sitawutfobela tibonelelo talomTsetfo ngaso sonkhe sikhatsi, nekutsi utakwatisa *liTiko* masinyane nangabe anesizatfu lesimenta akholwe kwekutsi lesichamuki asititfobeli tibonelelo talomTsetfo; futsi
- (c) *umcashi* atawukhipha setsembiso sekukhokha timali letimisiwe tekubhadala tindleko tekubuyiselwa kwemuntfu eveni lakubo kanye naletinye tindleko nakungahle kwenteke kutsi leso *sichamuki* sehluleke kuphuama nangabe singasavumeleki kuhamba sivakashe kwesikhashana e*Riphabliki*.

(6) Umnikati wemvume *yemsebenti* yekuntjintja bantfu ngekhatsi enkampanini angenta *umsebenti* awentele kuphela *umcashi* lekubhekiswe kuye esigabenincane (5) nafutsi ngekuhambisana nenchazelo yekutsi uyini umsebenti wakhe kanye naleminye imibandzela lecatjangelwako kulesifakazeliso lekubhekiswe kuso esigabenincane (5) kumbe leyo leshiwo kumvume yakhe.

Retired person permit

20. (1) A retired person permit may be issued for a period exceeding three months to a *foreigner* who intends to retire in the *Republic*, provided that the *foreigner* provides proof that such *foreigner* has—

- (a) the right to a pension or an irrevocable annuity or retirement account which will give such *foreigner* a *prescribed* minimum payment for the rest of his or her life from the country of his or her origin; or 5
- (b) a minimum *prescribed* net worth.

(2) The *Department* may authorise the holder of a retired person permit to conduct work under terms and conditions as the *Department* may deem fit to determine under the circumstances. 10

(3) A retired person permit may—

- (a) allow its holder to sojourn in the *Republic* on a seasonal or continuous basis; and
- (b) not exceed a four-year period, at the expiry of which it may be renewed one or more times, subject to subsection (1). 15

Corporate permit

21. (1) A corporate permit may be issued by the *Department* to a *corporate applicant* to employ *foreigners* who may conduct work for such *corporate applicant*.

(2) After consultation with the *Departments* of Labour and of Trade and Industry, the *Department* shall determine the maximum number of *foreigners* to be employed in terms of a corporate permit by a *corporate applicant*, after having considered— 20

- (a) the certification prepared by a *chartered accountant* on the basis of the relevant prescription or information of the *Department* of Labour, if any, that at any given time the relevant *foreigners* are employed on terms and conditions not inferior to those offered to *citizens* and *residents* or prevailing in the relevant market segment, taking into account collective bargaining agreements and other standards, if any; 25
- (b) the undertaking by the *corporate applicant* that it will—
 - (i) take adequate or *prescribed* measures to ensure that any *foreigner* employed in terms of the corporate permit will at any time comply with the provisions of *this Act* and the corporate permit; and
 - (ii) immediately notify the *Department* if it has reason to believe that such *foreigner* is no longer in compliance with subparagraph (i) above;
- (c) the financial guarantees posted in the *prescribed* amount and form by the *corporate applicant* to defray *deportation* and other costs should the corporate permit be withdrawn, or certain *foreigners* fail to leave the *Republic* when no longer subject to the corporate permit; and 35
- (d) corroborated representations made by the *corporate applicant* in respect of the need to employ *foreigners*, their job descriptions, the number of *citizens* or *residents* employed and their positions, and other *prescribed* matters. 40

(3) The *Department* may withdraw or modify the corporate permit for good and reasonable cause.

(4) In consultation with the *Minister* of Trade and Industry or Minerals and Energy or Agriculture, as the case may be, the *Minister* of Labour may designate certain industries, or segments thereof, in respect of which the Government may— 45

Imvume yemuntfu lotsetse umhlalaphansi

20. (1) Imvume yemuntfu lotsetse umhlalaphansi ingakhishelwa sikhatsi lesendlula tinyanga letintsatfu inikwe *sichamuki* lesitimisele kudla umhlalaphansi waso eRiphabliki, ingce nje nangabe leso *sichamuki* siveta buafakazi bekutsi leso *sichamuki*— 5
- (a) sinemvume yekutfole impesheni kumbe samba lesitsite semali lesikhokhwa njalo njalo ngemuva kwesikhatsi lesitsete lesingabuyeli emuva kumbe imali yemhlalaphansi, lokutawuniketa leso *sichamuki* imali *lemisiwe* lengendluli enanini lelibekiwe lesitayikhokhelwa live lesichamuka kulo nalesitayitfole imphilo yaso yonkhe; kumbe 10
- (b) samba lesimisiwe lesingendluli enanini lelibekiwe lesisala nasekudvonswe tonkhe letinye tindleko.
- (2) *LiTiko* lingagunyata umnikati wemvume yemuntfu lotsetse umhlalaphansi kutsi ente *umsebenzi* ngaphansi kwaletfo timeko kanye nemibandzela *liTiko* lelingakubona kutsi kufanele ngaphansi kwaletfo timeko. 15
- (3) Imvume yemuntfu lotsetse umhlalaphansi—
- (a) ingavumela umnikati wayo kutsi ahambe avakasha kwesikhashana eRiphabliki ngesikhatsi lesitsite semnyaka kumbe sikhatsi sonkhe; futsi
- (b) angeke yendlule sikhatsi lesiminyaka lemine, lekutakutsi nasesiphelile iphindze ivuselelwe kube kanye kumbe kanyenti, ngekulandzela sigabancane 20
- (1).

Imvume yetemabhizimisi

21. (1) Imvume yebhizimisi ingakhishwa *liTiko* liyinike *umentisicelo wetemabhizimisi* kutsi acashe *tichamuki* kutsi tisebentele lowo *mentisicelo wetemabhizimisi*. 25
- (2) Ngemuva kwekubonisana neliTiko letebaSebenti kanye neliTiko letekuHweba netiMboni, *liTiko* litawuncuma linani lebukhulu bekugcina *letichamuki* letitawucashwa ngumentisicelo *wetemabhizimisi* ngekumisa kwemvume *yetemabhizimisi*, ngemuva kwekubukisisa—
- (a) sifakazeliso lesentiwe ngumbhalitimali *lobhalisiwe* lesisuselwe kuloko lokumisiwe lokuhambisana naloko kumbe imininingwane lebuya eTikweni letebaSebenti, nangabe ikhona, sekutsi nganobe ngusiphi sikhatsi *letichamuki* lekukhulunywa ngato tisebenta ngaphansi kwetimeko kanye nemibandzela lokungekho ngaphansi kunaloko lokunikwe *takhamuti* kanye ne**ahlali** kumbe loko lokukhona kulesigaba semsebenzi lonjalo, nawubuka 30
- tivumelwano tekukhulumisana kwebasebenti bandzawonye kanye nebacashi ngemaholo kanye naletinye timeko lekusetjentwa ngaphansi kwato, kanye naleminyane imibandzela, nangabe ikhona; 35
- (b) setsembiso lesentiwe ngumentisicelo *wetemabhizimisi* sekutsi—
- (i) utawutsatsa tinyatselo letenele kumbe *letimisiwe* tekucinisekisa kutsi nobe ngusiphi *sichamuki* lesicashwe ngekumisa kwalemvume yetemabhizimisi nobe ngasiphi sikhatsi sitawutfobela tibonelelo taloMtsetfo kanye nemvume yetemabhizimisi; futsi 40
- (ii) utakwatisa *liTiko* masinyane nangabe anesizatfu lesimenta akholwe kwekutsi leso *sichamuki* asisamtfobelanga pharagrafuncane (i) ngenhla; 45
- (c) setsembiso setimali lesishiwo kulesamba kanye nasefomini lokumisiwe lesentiwe ngumentisicelo *wetemabhizimisi* sekutsi utawukhokha tindleko tekubuyiselwa kwemuntfu *eveni lakubo* kanye naletinye tindleko nakungahle kwenteke lemvume yetemabhizimisi ihociswe, kumbe nakungahle kwenteke kube khona *tichamuki* letitsite letingasafuni kuhamba eRiphabliki nangabe 50
- tingasekho ngaphansi kwemvume yetemabhizimisi; kanye
- (d) nebufakazi baloko lokushiwo ngumentisicelo *wetemabhizimisi* macondzana nesidzingo sekucasha *tichamuki*, inchazelo yekutsi uyini umsebenzi wato, linani letakhamuti kumbe *bahlali* labacashiwe kanye netikhundla tabo, kanye naletinye tindzaba letimisiwe. 55
- (3) *LiTiko* lingahocisa kumbe ligucule imvume yetemabhizimisi nakukhona sizatfu lesihle nalesivakalako sekwenta njalo.
- (4) Ngekubonisana neNdvuna yetekuHweba netiMboni kumbe yetiBiyo neMandla kumbe yetekuLima, kungaba nobe nguyiphi, iNdvuna yetebaSebenti ingakhomba timboni letitsite, kumbe tigaba letitsite tato, le macondzana nato Hulumente— 60

- (a) reduce or waive the requirements of subsection (2) (d); or
 - (b) enter into agreements with one or more *foreign states* and set as a condition of a corporate permit that its holder—
 - (i) employs *foreigners* partially, mainly or wholly from such foreign countries; and
 - (ii) remits a portion of the salaries of such *foreigners* to such foreign countries;
 - (c) apply this subsection in respect of *foreigners* required for seasonal or temporary peak period employment; or
 - (d) waive or reduce the requirement of subsection (2)(c) under special conditions.
- (5) The holder of a corporate permit may also employ *foreigners* in terms of section 19.

Exchange permit

22. An exchange permit may be issued by the *Department* to a *foreigner*—
- (a) participating in a programme of cultural, economic or social exchange, organised or administered by an *organ of State*, or a public higher education institution, in conjunction with an organ of a *foreign state*, provided that—
 - (i) after consultation with the *Board*, the *Minister* may delegate the authority to issue such permits to such *organ of State* if such *organ of State* has satisfied the *Minister* that it can ensure the compliance of such *foreigner* with *this Act* and report to the *Department* on the stages and the completion of the relevant programme together with other *prescribed* information;
 - (ii) it may be *prescribed* that, in respect of certain programmes, upon expiration of such permit such *foreigner* may not qualify for a *status* until he or she has complied with the requirement of a *prescribed* period of physical presence in his or her *foreign country* or of domicile outside the *Republic*; or
 - (b) who is under 25 years of age and has received an offer to conduct *work* for no longer than one year, provided that—
 - (i) the prospective *employer* certifies that the position exists, and has committed himself or herself to—
 - (aa) pay such *foreigner* remuneration which complies with applicable legal requirements;
 - (bb) provide for the welfare and the needs of such *foreigner* while in the *Republic* under the aforesaid permit; and
 - (cc) report to the *Department* the failure of the *foreigner* to comply with the terms of his or her permit or to *depart* when so required;
 - (ii) such *foreigner* may not conduct *work* other than *work* for which the permit is issued; and
 - (iii) such *foreigner* may not qualify for a temporary or permanent residence permit until he or she has spent two years outside the *Republic*, which requirement may be waived by the *Department* in extraordinary circumstances.

Asylum

23. The *Department* may issue an asylum permit to an asylum seeker subject to the Refugees Act, 1998 (Act No. 130 of 1998), on any *prescribed* terms and conditions.

- (a) angatinciphisa kumbe angatibiti tidzingakalo tesigabancane (2)(b); kumbe
 (b) angenta tivumelwane namunye kumbe minyenti *imibuso yakulamanye emave* futsi akubeke kube ngumbandzela wemvume yetemabhizimisi kwekutsi umnikati wayo—
 (i) utawucasha incenye yato, linyenti lato kumbe tona kuphela *tichamuki* 5
 letibuya kulawo mave lamanye; futsi
 (ii) utawuyisa incenye yemaholo aleto *tichamuki* kulawo mave *tichamuki* letibuya kuwo;
 (c) lingasebentisa lesigabancane lesi macondzana *netichamuki* letidzingakalele kusebenta umsebenti loba khona ngetikhatsi letitsite temnyaka kumbe 10
 umsebenti loba mnyenti kwesikhashana; kumbe
 (d) lingatyekela lingatibiti kumbe lehlise tidzingakalo tesigabancane(2)(d) nangabe kukhona timeko letitsite.
 (5) Umnikati wemvume yetemabhizimisi angaphindze acashe *tichamuki* ngekumisa kwesigaba 19. 15

Imvume yekuntjintjiselana kwemave ngebantfu

22. (1) Imvume yekuntjintjiselana kwemave ngebantfu ingakhishwa *liTiko* ikhishelwe *sichamuki*—
 (a) lesihlanganyele eluhlelweni lwekuntjintjiselana kwemave ngebantfu kutemasiko, temnotfo kumbe temphakatsi, lokugcugcutelwe kumbe 20
 lokuphetfwe ngumtimba wemBuso, kumbe sikhungo semfundvo lephakeme sahumende, bahlanganyele nemtimba wembuso *wakulelinye live*, ingce nje nangabe—
 (i) ngemuva kwekubonisana ne*Bhodi*, *iNdvuna* itakwetfwe lowo mtimba wemBuso ligunya lekukhipha leyo mvume nangabe lowo mtimba 25
 wemBuso sewenetise *iNdvuna* kutsi utawucinisekisa kutsi leso *sichamuki* siyawutfobela *lomTsetfo*, futsi unikete *liTiko* umbiko wekutsi loluhlelo selukusiphi sigaba nekutsi lutawuphela nini kanye kanye nangalemunye imininingwane *lemisiwe*;
 (ii) macondzana netinhlelo letitsite futsi nangalesikhatsi leyo mvume 30
 seyiphelelwe sikhatsi, kungamiswa kwekutsi leso *sichamuki* singabi nelilungelo lekuba *nesimo sesichamuki eveni* size sitfobele tidzingakalo tesikhatsi lesimisiwe sekuba khona ngekwenyama eveni lakubo kumbe eveni lesitinte kulo lelingaphandle kwe*Riphabliki*;
 (b) lesineminyaka yebudzala lengaphansi kwe-25 futsi lesitfole setsembiso 35
 sekunikwa *umsebenti* sikhatsi lesingendluli umnyaka munye; ingce nje nangabe—
 (i) lowo lotimisele kuba ngumcashi waso afakazelisa kwekutsi sikhundla sikhona, nafutsi atinikele ekutseni—
 (aa) utawukhokhela leso *sichamuki* liholo lelihambisana netidzingakalo 40
 temtsetfo letisebenta lapho;
 (bb) utawubonelela inhlalakahle kanye netidzingo kwaleso *sichamuki* ngalesikhatsi sise*Riphabliki* ngaphansi kwalemvume leshiwo la ngenhla; futsi
 (cc) utawubikela *liTiko* ngekwehluleka kwesichamuki kutfobela timiso 45
 temvume yaso tekutsi *siphume* kuleli nangabe sidzingeka kutsi sente njalo;
 (ii) leso *sichamuki* asingeke sente lomunye *umsebenti* ngaphandle kwalomsebenti imvume lekhiselwe wona; futsi
 (iii) leso *sichamuki* asingeke sibe nelilungelo lekuba nemvume yekuhlala 50
 sikhashana kumbe yekuhlala somphelane size sicedze iminyaka lemibili ngaphandle kwe*Riphabliki*, lekusidzingakalo *liTiko* lelingasiyekela lingasibiti ngaphansi kwetimeko letingaketayeleki.

Kubhaca kulelinye live

23. (1) *LiTiko* lingakhipha imvume yekubhaca kulelinye live ikhishelwe *umbaleki* 55
 ngaphansi kwemTsetfo webaBaleki, 1998 (umTsetfo No. 130 wa 1998), kanye nangaphansi kwanobe ngutiphi timeko kanye nemibandzela lokumisiwe.

Cross-border and transit passes

24. (1) The *Department* may issue a cross-border pass with the same effect as a multiple admission visitor's permit to a *foreigner* who is a *citizen* of a *prescribed foreign country* with which the *Republic* shares a *border* and who does not hold a *passport* but has received a *prescribed* identity document by the *Department* and is registered with the *Department*. 5

(2) The *Department* may issue a transit *visa* authorising a *foreigner* travelling to a *foreign country* to make use of the transit facilities at a *port of entry*.

PERMANENT RESIDENCE**Permanent residence**

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25. (1) The holder of a permanent residence permit has all the rights, privileges, duties and obligations of a *citizen*, save for those rights, privileges, duties and obligations which a law or the Constitution explicitly ascribes to *citizenship*.

(2) Subject to *this Act*, upon *application*, one of the permanent residence permits set out in sections 26 and 27 may be issued to a *foreigner*. 15

(3) A permanent residence permit is to be issued on condition that the holder is not a *prohibited person*, and subject to section 28 of *this Act*.

(4) For good cause, as *prescribed*, the *Department* may attach reasonable individual terms and conditions to a permanent residence permit.

Direct residence

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26. Subject to section 25, the *Department* shall issue a permanent residence permit to a *foreigner* who—

(a) has been the holder of a *work permit*, including one issued under a corporate permit, in terms of *this Act* for five years and has received an offer for permanent employment, provided that— 25

- (i) such *foreigner* submitted a certification from his or her prospective permanent employer's chartered accountant of the job description and that the position exists and is intended to be filled by such *foreigner*; and
- (ii) the *Department* of Labour certifies that the terms and conditions of such offer, including salary and benefits, are not inferior to those prevailing in the relevant market segment for *citizens* and *residents*, taking into account applicable collective bargaining agreements and other standards; 30

(b) is the spouse of a *citizen* or *resident*, provided that—

- (i) the *Department* is satisfied that a good faith spousal relationship exists; and 35
- (ii) such permit is issued on condition that it shall lapse if at any time within three years from its *application* the good faith spousal relationship no longer subsists, save for the case of death;

(c) is a child of a *citizen* or *resident* under the age of 21, provided that such permit shall lapse if such *foreigner* does not submit an *application* for its confirmation within two years of his or her having turned 21 years of age; or 40

(d) is a child of a *citizen*.

Residence on other grounds

27. The *Department* may issue a permanent residence permit to a *foreigner* of good and sound character who— 45

Timvume tekwewela imincele leminyenti kanye netekwendlula

24. (1) *LiTiko* lingakhipha imvume yekwewela imincele leminyenti lesebenta ngendlela lefanako nemvume leyetyelelele yekungeniswa kwemuntfu ngekuphindzelela ikhishelwe *sichamuki* lesisakhamuti sakulelanye live lelimisiwe lelinemcele munye neRiphabliki lesingenayo ipasipoti kepha lesinikwe incwadzi lengumtisi lelimisiwe siyiniwe *liTiko* nafutsi lesibhalisiwe *liTiko*. 5

(2) *LiTiko* lingakhipha *ivisa* yekwendlula legunyata *sichamuki* lesiya kulelanye live kutsi sisebentise tindzawo letilusito letisesikhumulweni sekungena eveni.

KUHLALA SOMPHELANE**Kuhlala somphelane**

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25. (1) Umnikati wemvume yekuhlala somphelane unawo onkhe emalungelo, tintfo letiyinsitakalo, umtfwalo kanye netibopho lokutfolwa *sakhamuti*, ngaphandle kwalawo malungelo, tintfo letiyinsitakalo, umtfwalo kanye netibopho loko umtsetfo kumbe umTsetfosisekelo ukunika kuphela bantfu labatakhamuti.

(2) Ngaphansi kwalomTsetfo, ngalesikhatsi umuntfu enta *sicelo*, yinye yaletimvume tekuhlala somphelane letishiwo esigabeni 21 na 22 ingakhishelwa *sichamuki*. 15

(3) Imvume yekuhlala somphelane kumele ikhishwe ngaphansi kwemibandzela yekutsi umnikati wayo akasiye umuntfu lowencatjelwe, kanye nagaphansi kwesigaba 26 salomTsetfo.

(4) Njengaloku kumisiwe, nangabe lifuna kwesekela intfo letsite lenhle, *liTiko* lingafaka timeko kumbe imibandzela levakalako emvumeni yekuhlala somphelane yemuntfu. 20

Kuhlala sibili

26. (1) Ngaphansi kwesigaba 20, *liTiko* litawukhipha imvume yekuhlala somphelane liyikhiphele *sichamuki* leso— 25

(a) lesibe ngumnikati wemvume yemsebenti ngekumisa kwalomTsetfo iminyaka lesihlanu futsi lesitfole setsembiso sekutsi sitawucashwa somphelane, ingce nje nangabe—

(i) leso *sichamuki* setfule sifakazeliso sencazelo yekutsi uyini lowo msebenti lesibuya kumbhalitimali lobhalisiwe walowo muntfu lofuna kumcasha somphelane futsi lesishoko kutsi leso sikhundla sikhona nekutsi kuhloswe kutsi sitsatfwe ngiso leso *sichamuki*; futsi 30

(ii) *liTiko* letebaSebenti lifakazela kwekutsi timeko kanye nemibandzela kwaleso setsembiso semsebenti, kufake ekhatsi liholo kanye netinsitakalo tebasebenti, akukho kuncane kunaloko lokukhona kulesigaba semsebenti lonjalo lokutfolwa *takhamuti* kanye ne**bahlali**, nangabe kubukwa tivumelwano tekukhulumisana kwebasebenti bandzawonye kanye nebacashi mayelana nemaholo kanye naletinye timeko lekusetjentwa ngaphansi kwako kanye naleminyenti imibandzela; 35

(b) lesingulowakakhe wesakhamuti kumbe umhlali, ingce nje nangabe— 40

(i) *liTiko* lenetisekile kwekutsi labantfu nembala bayindvodza nemfati; nekutsi

(ii) leyo mvume ikhishwe ngaphansi kwemibandzela letsi itawuphela nganobe ngusiphi sikhatsi nangabe kutakutsi kungakapheli iminyaka lemitsatfu kusukela esikhatsini lekweniwa ngaso *sicelo* kutfolakale kutsi abusekho lobudlelwane lebekukholelwa kutsi bukhona, ngaphandle kwanangabe munye wabo afile; 45

(c) lesingumntfwana wesakhamuti kumbe umhlali longaphansi kweminyaka yebudzala le-21, ingce nje nangabe leyo mvume itawuphela nangabe leso *sichamuki* asifaki *sicelo* sekutsi icinisekiswa kungakapheli iminyaka lemibili sifike eminyakeni yebudzala le-2; kumbe 50

(d) lesingumntfwana wesakhamuti.

Letinye tizatfu tekuhlala

27. *LiTiko* lingakhipha imvume yekuhlala somphelane liyikhiphele *sichamuki* lesinesimilo lesihle kanye nalesitsandzekako— 55

- (a) has received an offer for permanent employment, provided that—
 - (i) such *foreigner* submitted a certification from a *chartered accountant* acting on behalf of such *foreigner's* prospective permanent *employer* that the position exists and that the position and related job description was advertised in the *prescribed* form and no suitably qualified *citizen* or *resident* was available to fill it; 5
 - (ii) the *Department* of Labour certifies that the terms and conditions of such offer, including salary and benefits, are not inferior to those prevailing in the relevant market segment for *citizens* or *residents*, taking into account applicable collective bargaining agreements and other standards, if any; 10
 - (iii) the *application* falls within the yearly limits of available permits *prescribed* from time to time for each sector of industry, trade and commerce, after consultation with the *Departments* of Trade and Industry, Labour and Education; and
 - (iv) the permit may be extended to such *foreigner's spouse* and children 15 younger than 21 years of age;
- (b) taking into account any *prescribed* requirement, has demonstrated to the satisfaction of the *Department* extraordinary skills or qualifications, and to those members of such *foreigner's immediate family* determined by the *Department* under the circumstances or by regulation; 20
- (c) intends to establish a business in the *Republic* investing in it the *prescribed* financial contribution to be part of the intended book value as certified by a *chartered accountant*, and to the members of such *foreigner's immediate family*, provided that—
 - (i) the *Department* may waive or reduce such capitalisation requirements 25 for businesses *prescribed* from time to time to be in the national interest or when so requested by the *Department* of Trade and Industry; and
 - (ii) the permit shall lapse if the holder fails to renew such certification within two years of the issuance of the permit, and three years thereafter;
- (d) is a refugee referred to in section 27(c) of the Refugees Act, 1998 (Act No. 130 30 of 1998), subject to any *prescribed* requirement;
- (e) intends to retire in the *Republic*, provided that a *chartered accountant* acting on behalf of such *foreigner* certifies that such *foreigner*—
 - (i) has the right to a pension or an irrevocable annuity or retirement account which will give such *foreigner* a *prescribed* minimum payment for the 35 rest of his or her life; or
 - (ii) has a minimum *prescribed* net worth;
- (f) has provided a certification by a *chartered accountant* that he or she has a *prescribed* minimum net worth and has paid a *prescribed* amount to the *Department*; or 40
- (g) is the relative of a *citizen* or *resident* within the first step of kinship.

Withdrawal of permanent residence

28. The *Department* may withdraw a permanent residence permit if its holder—

- (a) lesemukele setsembiso sekutfola umsebenti wasomphelane, ingce nje nangabe—
- (i) leso *sichamuki* setfule sifakazeliso lesibuya *kumbhalitimali lobhalisiwe* lotfunywe nguloyo *mcashi* lotimisele kucasha lesichamuki somphelane lesishoko kutsi leso sikhundla sikhona nekutsi leso sikhundla kanye nencazelo yekutsi uyini loyo msebenti kwakhangiswa ngendlela lemisiwe, nekutsi asikho *sakhamuti* kumbe *umhlali* lonetimpawumfundvo letifunekako lotfolakele kutsi atsatse leso sikhundla; 5
 - (ii) liTiko letebaSebenti liyafakazela kutsi timeko kanye nemibandzela kwaleso sitsembiso semsebenti, kufake ekhati liholo kanye netinsitakalo tebasebenti, akukho kuncane kunaloko lokutfolakala kulesigaba semsebenti lofana nalowo lokutfolwa *takhamuti* kumbe *bahlali*, nawubuka tivumelwano letikhona kuleyo ndazwo tekukhulumisana kwebasebenti bandzawonye kanye nebacashi mayelana nemaholo kanye naletinye timeko lokusetjentwa ngaphansi kwato, kanye naleminye imibandzela, nangabe ikhona; 10
 - (iii) leso *sicelo* siwela ngekhatsi kwemanani lakhawulelwe emnyaka nemnyaka etimvume letitfolakalako lamiswe *ngesikhatsi nesikhatsi* kulowo nalowo mkhakha wetimboni, tekuhweba kanye netemnotfo, ngemuva kwekubonisana neliTiko letekuHweba netiMboni, letebaSebenti kanye neletemFundvo; nekutsi 20
 - (iv) leyo mvume ingangetwa kutsi ifake *lowakakhe wesichamuki* kanye nebantfwabaso labangaphansi kweminyaka yebudzala le-21;
- (b) nawubuka nobe ngutiphi tidzingakalo, lesikhombise likhono kumbe timphawumfundvo lokungakavami ngendlela letakwenetisa liTiko, kanye nemalunga *emndeni losondzele wesichamuki* latawushiwo liTiko ngaphansi kwaletu timeko kumbe ngaphansi kwetimiso; 25
- (c) lesicondze kucalisa ibhizimisi eRiphabliki lapho sitawutalisa khona imali ngekufaka samba semali lesimisiwe lesitakuba yincenye yentsengo lesemabhukwini lehlontotwe yalebhizimisi, njengaloku kufakazelwe ngumbhalitimali lobhalisiwe, kanye nemalunga *emndeni losondzele* waleso *sichamuki*, ingce nje nangabe— 30
- (i) liTiko litatiyekela lingatibiti kumbe litawunciphisa leto tidzingakalo tekufaka samba sekucalisa ibhizimisi kulawo mabhizimisi lamisiwe *ngesikhatsi nesikhatsi* kutsi atakuba lusito eveni kumbe nangabe licelwa liTiko letekuHweba netiMboni kutsi lente njalo. 35
 - (ii) lemvume itawuphela nangabe umnikati wayo ehluleka kuvuselela leso sifakazeliso kungakapheli iminyaka lemibili leyo mvume yakhishwa, futsi kungakapheli iminyaka lemitsatfu ngemuva kwaloko; 40
- (d) lesingumbaleki lekubhekiswe kuye esigabeni 27(c) semTsetfo webaBaleki, 1998 (umTsetfo No. 130 wa 1998), ngekulandzela nobe ngutiphi tidzingakalo letimisiwe;
- (e) lesineminyaka yebudzala lengetulu kwa-60 futsi lesitimisele kutsatsa umhlalaphansi eRiphabliki, ingce nje nangabe *umbalitimali lobhalisiwe* lotfunywe ngulesichamuki atawufakazelisa kwekutsi leso *sichamuki*— 45
- (i) sinelilungelo lekutfola impesheni kumbe samba lesitsite semali salabatsetse umhlalaphansi lesikhokhwa njalo njalo ngemuva kwesikhatsi lesitsete lesingabuyiselwa emuva, kumbe imali yemhlalaphansi lengabuyeli emuva, lokutawuniketa leso *sichamuki* imbhadalo yesamba semali sekugcina lemisiwe lesitayitfola imphilo yaso yonkhe; futsi/kumbe 50
 - (ii) sinesamba semali sekugcina lesimisiwe lesisele nasekudvonswe tonkhe letinye tindleko;
- (f) lesetfule sifakazeliso lesentiwe ngumbhalitimali lobhalisiwe sekutsi sona sinesamba semali sekugcina lesimisiwe lesisele nasekudvonswe tonkhe letinye tindleko futsi sikhokhele liTiko samba semali lesimisiwe; kumbe 55
- (g) lesisihlobo sengati sesakhamuti kumbe *umhlali*.

Kuhociswa kwemvume yekuhlala somphelane

28. liTiko lingayihocisa imvume yekuhlala somphelane nangabe umnikati wayo— 60

- (a) within four years of the issuance of such permit, has been convicted of any of the offences listed in Schedule 1;
- (b) has been convicted three times of any of the offences listed in Schedules 1 and 2;
- (c) has been absent from the *Republic* for more than three years, provided that— 5
 - (i) upon showing good cause and upon prior *application* the *Department* may extend this period in specific cases;
 - (ii) the time when such holder—
 - (aa) was residing abroad while in the service of the State;
 - (bb) was residing abroad while a representative or employee of a person 10 or association of persons *resident* or established in the *Republic*;
 - (cc) was residing abroad while in the service of an international organisation of which the State is a member;
 - (dd) in the case of the *spouse* or dependent child of a person referred to in subitem (aa), (bb) or (cc), such *spouse* or child was residing with 15 such person; or
 - (ee) in the case of the *spouse* or dependent child of a person who is a South African *citizen*, such *spouse* or child was residing with such person, 20
- (iii) the *Minister*, on recommendation of the *Director-General*, may grant an exemption from the requirement of residence in respect of certain *residents* or class of *residents*;
- (iv) the period of absence may only be interrupted by an *admission* and sojourn in the *Republic*; and 25
- (v) the requirement of residence in the *Republic* shall not affect any *foreigner* to whom exemption has been granted under section 31(2)(b) as a member of a category of persons, unless such *foreigner* previously entered the *Republic* or sojourned therein for the purpose of permanent residence under the authority of such exemption; or 30
- (d) has not taken up residence in the *Republic* within one year of the issuance of such permit.

EXCLUSIONS AND EXEMPTIONS

Prohibited persons

29. (1) The following *foreigners* do not qualify for a temporary or a permanent 35 residence permit:

- (a) those infected with infectious diseases as *prescribed* from time to time;
- (b) anyone against whom a warrant is outstanding or a conviction has been secured in the *Republic* or a *foreign country* with which the *Republic* has regular diplomatic relations in respect of genocide, terrorism, murder, torture, 40 drug trafficking, money laundering or kidnapping;
- (c) anyone previously deported and not rehabilitated by the *Department* in the *prescribed* manner;
- (d) a member of or adherent to an association or organisation advocating the practice of racial hatred or social violence; and 45
- (e) anyone who is or has been a member of or adherent to an organisation or association utilising crime or terrorism to pursue its ends.

- (a) kutakutsi kungakapheli iminyaka lemine leyo mvume yakhishwa, abe asatfolwe anelicala lanobe ngusiphi saletephulomtsetfo letiseluhlwini lweShejuli 1;
- (b) kutakutsi kungakapheli iminyaka lengemashumi lamabili leyo mvume yakhishwa, abe asatfolwe anelicala emahlandla lamatsatfu lanobe ngusiphi saletephulomtsetfo letisetihlwini taShejuli 1 na 2; 5
- (c) abengekho eRiphabliki iminyaka lengetulu kwalemitsatfu, ngaphandle kwanangabe—
- (i) ngemuva kwekutsi *liTiko* selikhombisile kwekutsi lifuna kwenta sento lesitsite lesihle nafutsi ngemuva kwekutsi sekweniwe *sicelo* ngaphambilini, *liTiko* lingasengeta leso sikhatsi etindzabeni letigaguliwe; 10
- (ii) lesikhatsi leso loyo mnikati—
- (aa) abehlala ngesheya kwemave ngalesikhatsi asebentela umBuso;
- (bb) abehlala ngesheya kwemave ngalesikhatsi angummeleli kumbe angumcashwa wemuntfu kumbe inhlanyanya yebantfu labahlala kumbe labatinte eRiphabliki; 15
- (cc) abehlala ngesheya kwemave ngalesikhatsi asebentela inhlanyanya yemave ngemave umBuso lolilunga layo;
- (dd) endzabeni yalowakakhe kumbe umntfwana londliwa ngumuntfu lekubhekiswe kuye kuliphutuncane (aa), (bb) kumbe (cc), lowakakhe loyo kumbe umntfwana loyo abehlala nalowo muntfu; kumbe 20
- (ee) endzabeni yalowakakhe kumbe umntfwana londliwa ngumuntfu losakhamuti saseNingizimu Afrika, lowakakhe loyo kumbe umntfwana loyo abehlala nalowo muntfu, 25
- asinawubalwa njengencenye yaleso sikhatsi;
- (iii) iNdvuna, nakukhona tincomo letentiwe ngumCondzisijikelele, ingakhulula bahlali kumbe sigaba sebahlali lesitsite kulesidzingakalo lesifuneka kumhlali; 30
- (iv) lesikhatsi sekuba ngekho kwakhe singancanyulwa kuphela kungeniswa kanye nekuhamba avakashe kwesikhashana kwalowo muntfu eRiphabliki; futsi
- (v) sidzingakalo lesifuneka kubahlali eRiphabliki asinawutsintsa nobe ngusiphi sichamuki lesikhululwe ngaphansi kwesigaba 25(2)(b) njengelilunga leluhlobo lolutsite lwebantfu, ngaphandle kwekutsi leso sichamuki ngaphambilini sake sangena kumbe sake sahamba savakasha kwesikhashana eRiphabliki ngenjongo yekuhlala khona somphelane ngaphansi kweligunya laloko kukhululwa; kumbe 35
- (d) angazange acale kuhlala eRiphabliki kungakapheli umnyaka munye leyo mvume yakhishwa. 40

KUKHIPHELA NGAPHANDLE KANYE NEKUCOLELWA

Bantfu labencatjelwe

29. (1) Letichamuki letilandzelako atinalo lilungelo lekuba nemvume yekuhlala sikhashana kumbe somphelane: 45
- (a) leto letiphetfwe tifo letitsatselwanako njengaloku kumisiwe ngesikhatsi nesikhatsi;
- (b) nobe ngubani lekuphume incwadzi yekutsi aboshwe kumbe lolahlwe licala eRiphabliki kumbe kulelinye live iRiphabliki levamisile kuba nebudlelwane nalo lobusemkhatsini wemave lamabili, macondzana nekubhujiswa kwebantfu, buphekula, kubulala, kuhweba ngetidzakamivo, kugucula imali letfolakele ngebugebengu ibe nguleyemukelekile kumbe kutfumba bantfu; 50
- (c) takhamuti takulamanye emave latsite latawumiswa ngesikhatsi nesikhatsi;
- (d) nobe ngubani lowake wabuyiselwa eveni lakubo ngaphambilini futsi longakabuyiselwa liTiko esimilweni lesihle ngendlela lemisiwe; 55
- (e) lilunga laloko kumbe lelihambisana nembutsano kumbe inhlanyanya lekhusata tento tekuzonda letinye tinhlanya kumbe tebudlova emphakatsini; kanye

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

Undesirable persons

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

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

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

Exemptions 20

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

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

(2) Upon *application*, the *Minister*, as he or she deems fit, after consultation with the *Board*, may under terms and conditions determined by him or her—

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

- (f) nobe ngubani lolilunga kumbe lowake waba lilunga laloko kumbe lelihambisana nenhlango kumbe umbutsano losebentisa bugebengu kumbe buphekula kuteza tinjongo tabo.
- (2) Ngemuva kwekubonisana nem*Condzisijikelele*, futsi nayifuna kwesekela intfo lenhle letsite, i*Ndvuna* ingamemetela umuntfu lekubhekiswe kuye esigabenincane (1) kutsi akasasiye umuntfu lowencatjelwe. 5

Bauntfu labangakemukeleki

30. (1) Letichamuki letilandzelako tingamenyetelwa li*Tiko* kutsi tibantfu labangakemukeleki njengaloku kumisiwe:
- (a) umuntfu lonakekelwa kumbe lekunekwenteka kutsi anakekelwe nguhulumende; 10
 - (b) nobe ngubani lokhonjwe yi*Ndvuna* kutsi ungumuntfu lonjalo ngemuva kwekubonisana ne*Bhodi*, kumbe endzabeni lephutfumako, lokhonjwe yi*Ndvuna* lekungiyo, etindzabeni letifana naleti, letakwatisa i*Bhodi* masinyane njengaloku kungakhonakala; 15
 - (c) nobe ngubani lomenyetelwe likhotho kutsi akakwati kutentela lutfo;
 - (d) umuntfu lowehluleke kukhokha tikweledi takhe longeke abuye akwati kutimela ngetinyawo takhe;
 - (e) nobe ngubani lotjelwe kutsi akaphume ngekumisa kwalom*Tsetfo*; 20
 - (f) nobe ngubani lobalekela bemtsetfo; kanye
 - (g) nanobe ngubani lowake walahlwa licala lebugebengu phambilini longazange anikwe litfuba lekukhokha inhlawulo, ngendzaba yekutiphatsa kwakhe lokungaba sephulomtsetfo e*Riphabliki*, loko lokukhiphela ngaphandle tephulomtsetfo letitsite letimisiwe.
- (2) Ngalesikhatsi kwentiwa sicelo semuntfu lotsintsekako, li*Tiko* lingatiyekela lingatinaki nobe ngutiphi taletizatfu tekuba ngumuntfu longakemukeleki, ingce nje nangabe li*Tiko* litawubikela i*Ndvuna* ne*Bhodi* ngaletso tincumo kanye netizatfu tekwenta loko. 25

Kucolelwa

31. (1) Labantfu kumbe tinhlobo tebantfu labalandzelako abasito tichamuki letingekho emtsetfweni; 30
- (a) lilunga lembutfo wetemphi wakulelinye live lelivunyelwe nguHulumende we*Riphabliki* kutsi lingene e*Riphabliki*, ngalesikhatsi loko kuvunyelwa kusasebenta; kanye
 - (b) netisebenti kanye nebantfu labasebenta emkhunjini wembuso wakulelinye live, ngalesikhatsi lowo mkhumbi usesikhumulweni. 35
- (2) Ngalesikhatsi kwentiwa sicelo, i*Ndvuna*, nangabe yona ikubona kulungile, ngemuva kwekubonisana ne*Bhodi* nafutsi ngaphansi kwetimeko kanye nemibandzela lokubekwe ngiyo—
- (a) ingavumela sivakashi lesihloniphekile kanye nemalunga latsite emndeni losondzele waso kanye nebantfu labasisebentelako kumbe bantfu labahlala emtini waso kutsi bangeriswe futsi bahambe bavakashe kwesikhashana e*Riphabliki* sikhatsi lesingendluli tinyanga letisitfupha, ingce nje nangabe letichamuki leto tingakatimiseli kuhlala e*Riphabliki* somphelane; 40
 - (b) inganiketa sichamuki kumbe luhlobo lolutsite lwetichamuki emalungelo lanikwa bahlali labahleti somphelane sikhatsi lesigaguliwe kumbe lisingakagagulwa nangabe kukhona timeko letikhethsekile letenta kutsi kube yintfo lekahle kutsatsa lesi sincumo, ingce nje nangabe i*Ndvuna*—
 - (i) itawukhiphela ngaphandle sinye kumbe tinyenti tichamuki letikhonjiwe kulolo hlobo lwetichamuki; futsi 50
 - (ii) nayifuna kwesekela sento lesitsite lesihle, itawuhocisa lelo lungelo leliniketwe sichamuki kumbe luhlobo lolutsite lwetichamuki;
 - (c) ingagunyata nobe ngumuphi umuntfu kumbe luhlobo lwebantfu kutsi angene e*Riphabliki* kulenye indzawo lengesiso sikhumulo sekungena eveni, lekutakutsi nakwenteke njalo li*Tiko* likhiphele lowo muntfu kumbe bantfu imvume lebhaliwe lemisiwe, kumbe sitembu lesitawushaywa epasipotini yakhe njengaloku kumisiwe, ingce nje kwateka kutsi lelo gunya litawukwati kuhociswa yi*Ndvuna* nganobe ngusiphi sikhatsi; futsi 55

(d) for good cause, waive any *prescribed* requirement or form, provided that if such consultation requirement would unduly delay an urgent action, the *Minister* may inform the *Board* after the fact of any action taken under this subsection and of the reasons for the urgency.

ENFORCEMENT AND MONITORING

5

Illegal foreigners

32. (1) Any *illegal foreigner* shall depart, unless authorised by the *Department* to remain in the *Republic* pending his or her *application* for a *status*.

(2) Any *illegal foreigner* shall be deported.

Inspectorate

10

33. (1) An inspectorate shall be established through *regulations* and shall consist of such persons, including immigration officers, as may be determined by the *Minister*.

(2) On the recommendation of the *Director-General*, the *Minister* shall appoint the head of the inspectorate.

(3) The inspectorate shall investigate any matter falling within the scope of *this Act*, 15 subject to the directions of the *Minister*, and shall in the performance of its functions follow such procedure as may be *prescribed*.

(4) An immigration officer may, for the purposes of *this Act*—

- (a) at any time before the commencement or in the course of an investigation 20 conduct an inspection *in loco*;
- (b) by notice in writing call upon any person who is in possession of or has the custody of or control over any thing which in the opinion of the *Department* is relevant to the investigation to produce such thing, and the *Department* may inspect and retain any thing so produced for a reasonable time; and
- (c) by notice in writing call upon any person to appear before the *Department* and 25 to give evidence or to answer questions relevant to the subject matter of the investigation,

provided that any of such notices shall specify the time when and the place where the person to whom it is directed shall appear, be signed by an immigration officer, be served by an immigration officer or by a sheriff by delivering a copy thereof to the person 30 concerned or by leaving it at such person's last known place of residence or business, and shall specify the reason why the article is to be produced or the evidence is to be given.

(5) In the pursuance of *this Act*, an immigration officer may obtain a warrant to—

- (a) enter or search any *premises* for a person or thing or to make inquiries, 35 including the power to—
 - (i) examine any thing found in or upon such *premises*;
 - (ii) request from the person who is in control of such *premises* or in whose possession or under whose control any thing is when it is found, or who is upon reasonable grounds believed to have information with regard to 40 such thing, an explanation or information; and
 - (iii) make copies of or extracts from any such thing found upon or in such *premises*;
- (b) apprehend an *illegal foreigner*, subject to section 34(1); or

(d) nayifuna kwesekela sento lesitsite lesihle, ingasiyekela ingasibiti sidzingakalo kumbe lifomu lokumisiwe, ingce nje kwateka kutsinangabe leso sidzingakalo sekubonisana sitawubambelela ngalokungenasidzingo kutsatfwa kwesinyatselo lesiphutfumako, *iNdvuna* ingatisa *iBhodi* ngemuva kwekutsi sesitsetfwe nobe ngusiphi leso sinyatselo lesitsetfwe ngaphansi kwalesigabancane lesi kanye netizatfu taloko kuphutfuma. 5

KWENTA KUTSI UMTSETFO UYALANDZELWA KANYE NEKUWUCAPHELA KUTSI USEBENTA NJANI

Tichamuki letingekho emtsetfweni

32. (1) Nobe ngusiphi *sichamuki lesingekho emtsetfweni* sitawuphuma eRiphabliki, ngaphandle kwekutsi sigunyatwe *liTiko* kutsi sihlale ngalesikhatsi sisalindzele umphumela *wesicelo* saso *sesimo sesichamuki eveni*. 10

(2) Nobe ngusiphi *sichamuki lesingekho emtsetfweni* sitawubuyiselwa *eveni lakubo*.

Bahloli

33. (1) Licembu lebahloli litawusungulwa ngaphansi kwetimiso futsi litawufaka labo bantfu, kufake ekhatsi tisebenti tahlumende letibukene netindzaba tetifikinamtfwalo, labatawubekwa *yiNdvuna*. 15

(2) Ngemuva kwesincomo lesentiwe ngumCondzisijikelele, Indvuna utawubeka inhloko yelicembu lebahloli.

(3) Licembu lebahloli litawuphenya nobe nguyiphi indzaba lewela ngaphansi kwalomTsetfo, ngekulandzela telayeto *teNdvuna*, futsi ngalesikhatsi lelicembu lenta umsebeni walo litawulandzela leto tinchubo njengaloku titawumiswa. 20

(4) *Sisebenti sahumende lesibukene netifikinamtfwalo lesibukene netifikinamtfwalolesibukene nnetindzaba tetifikinamtfwalo*, ngetinjongo talomTsetfo—

(a) nobe ngasiphi sikhatsi ngembikwekucalisa kumbe ngekuhamba kweluphenyo, singenta luhlolo lwaleyo ndzawo; 25

(b) ngenotisi lebhaliwe, singatjela nobe ngubani umuntfu lekungeyakhe kumbe lesesandleni sakhe kumbe lengaphansi kwakhe nobe nguyiphi intfo le ngekubona kweliTiko iphatselene neluphenyo kutsi lowo muntfu ayivete leyontfo, futsi *liTiko* lingayihlola libuye liyigcine nobe nguyiphi lentfo levetwe kanjalo sikhatsi lesemukelekile; futsi 30

(c) ngenothisi lebhaliwe, singabita nobe ngubani umuntfu kutsi avele ngembikweliTiko futsi anike bufakazi kumbe aphendvule imibuto letsintsana nendzikimba yendzaba yalolo luphenyo;

ingce nje nangabe nobe ngusiphi saletfo tatiso sitawugagula sikhatsi le ngaso kanye nedzawo lapho lomuntfu lesicondzise kuye atawuvela khona sisayinwe *sisebenti sahumende lesibukene netifikinamtfwalo lesibukene netifikinamtfwalolesibukene netifikinamtfwalo*, ihanjiswe *sisebenti sahumende lesibukene netifikinamtfwalo lesibukene netifikinamtfwalolesibukene netifikinamtfwalo* kumbe ngusherifu ngekutsi kuyiswe ikhophi yayo kulomuntfu locondzene naloko kumbe ishiywe endzweni lapho lowo muntfu wagcinwa ahlala khona kumbe achubela khona ibhizimisi, futsi itawugagula sizatfu leyontfo letawuvetelwa sona kumbe lobo bufakazi butawunikelwa sona. 35

(5) Ngesizatfu sekwenta lokufunwa ngulomTsetfo, *sisebenti sahumende lesibukene netifikinamtfwalo lesibukene netifikinamtfwalolesibukene netifikinamtfwalo* singatfolala incwadzi legunyata— 45

(a) kungena kumbe kusesha nobe nguwaphi *emabala* sifuna umuntfu kumbe intfo, kumbe kubuta imibuto, kufake ekhatsi emandla—

(i) ekuhlola nobe nguyiphi intfo letfolakele ekhatsi kumbe kulawo *mabala*;

(ii) ekucela umuntfu lophetse lawo *mabala* kumbe leyontfo lekungeyakhe kumbe lengaphansi kwakhe nobe nguyiphi leyontfo ngalesikhatsi letfolakele ngaso, kumbe lowo lekunetizatfu letivakalako tekukholelwa kwekutsi unelwati lolumayelana naleyontfo, unencazelo kumbe imininingwane kutsi ayivete; kanye 50

(iii) nekwenza emakhophi alentfo kumbe ekucaphuna kunobe nguyiphi leyontfo letfolakele lapho kumbe ngekatsi kwalawo *mabala*;

(b) kubamba *sichamuki lesingekho emtsetfweni*, ngekulandzela sigaba 34(1); kumbe

- (c) after having issued a receipt in respect thereof, seize and remove documentation or any other thing which—
- (i) is concerned with or is upon reasonable grounds suspected of being concerned with any matter which is the subject of any investigation in terms of *this Act*; or
 - (ii) contains, or is on reasonable grounds suspected to contain, information with regard to any such matter,
- provided that—
- (aa) any thing so seized shall be returned in good order as soon as possible after the purpose of its seizure has been accomplished; and
 - (bb) a person from whom a book or document has been taken shall be allowed reasonable access, including the right to make copies at his or her expense.
- (6) A warrant referred to in subsection (5) shall be issued by a magistrate of a *Court* which has jurisdiction in the area where the *premises* in question are situated, and only if it appears to the magistrate from information on oath that there are reasonable grounds for believing that a thing mentioned in subsection (5) is upon or in such *premises*, and shall specify which of the acts mentioned in subsection (5) may be performed thereunder by the person to whom it is issued.
- (7) A warrant issued in terms of this section shall be executed by day unless the magistrate who issues the warrant authorises its execution by night at times which shall be reasonable, and any entry upon or search of any *premises* in terms of this section shall be conducted with strict regard to decency and order, including—
- (a) a person's right to, respect for, and the protection of, his or her dignity;
 - (b) the right of a person to freedom and security; and
 - (c) the right of a person to his or her personal privacy.
- (8) A person executing a warrant in terms of this section shall immediately before commencing with the execution—
- (a) identify himself or herself to the person in control of the *premises*, if such person is present, and hand to such person a copy of the warrant or, if such person is not present, affix such copy to a prominent place on the *premises*; and
 - (b) supply such person at his or her request with particulars regarding his or her authority to execute such a warrant.
- (9) (a) An immigration officer may, without a warrant, enter upon any *premises*, other than a private dwelling, and exercise the powers referred to in subsection (5)(a) and (c)—
- (i) if the person who is competent to do so consents to such entry, search, seizure and removal; or
 - (ii) if he or she upon reasonable grounds believes that—
 - (aa) the required warrant will be issued to him or her in terms of subsection (5) if he or she were to apply for such warrant; and
 - (bb) the delay caused by the obtaining of any such warrant would defeat the object of the entry, search, seizure and removal.
- (b) Any entry and search in terms of paragraph (a) shall be executed by day, unless the execution thereof by night is justifiable and necessary.
- (10) (a) Any person who may on the authority of a warrant issued in terms of subsection (5), or under the provisions of subsection (9), enter upon and search any *premises*, may use such force as may be reasonably necessary to overcome resistance to such entry or search; and
- (b) No person may enter upon or search any *premises* unless he or she has audibly demanded access to the *premises* and has notified the purpose of his or her entry, unless such person is upon reasonable grounds of the opinion that any thing may be destroyed

- (c) ngemuva kwekukhipha irasidi yawo, kutsatsa asuse emaphepha kumbe nobe nguyiphi intfo—
- (i) lephatselene nayo kumbe lekunesizatfu lesivakalako sekusola kutsi iphatselene nanobe nguyiphi indzaba lengaphansi kwanobe nguluphi luphenyo ngekumisa kwalomTsetfo; kumbe 5
 - (ii) lecuketse, kumbe lekunesizatfu lesivakalako sekusola kutsi icuketse lwati loluphatselene nanobe nguyiphi leyo ndzaba, ingce nje nangabe—
- (aa) nobe nguyiphi intfo letsetfwe ngalendlela lena itawubuyiselwa emuva isesimweni lesikahle masinyane ngemuva kwekufeza injongo beyitsatselwe yona; nafutsi 10
 - (bb) umuntfu lekutsetfwe kuye incwadzi kumbe emaphepha atawuvunyelwa kufinyelela kuwo, kufake akhatsi lilungelo lwekenta emakhophi ngetindleko takhe.
- (6) Incwadzi yesigunyato lekubhekiswe kuyo esigabenincane (5) itawukhishwa ngumantji weliKhotso lelangamele endzaweni lapho lawo mabala lekukhulunywa ngawo atfolakala khona, nafutsi kuphela nangabe kubonakala kulomantji ngemuva kwekutfolala lwati lolufungelwe kutsi unesizatfu lesivakalako lesimenta akholwe kutsi intfo leshiwo esigabenincane (5) ilapho kumbe isekhatsi kulawo mabala, futsi lencwadzi yesigunyato itawugagula kutsi ngutiphi taletinyatselo letishiwo esigabenincane (5) letitawutsatfwa ngaphansi kwayo ngulomuntfu lekhishwe yanikwa yena. 20
- (7) Incwadzi yesigunyato lekhishwe ngekumisa kwalesigaba itawusetjentiswa emini ngaphandle kwekutsi lomantji lokhipha leyo ncwadzi agunyate kutsi isetjentiswe ebusuku ngetikhatsi letemukelekile, futsi nobe ngukuphi kungena lapho kanye nekusesha kwanobe nguwaphi emabala ngekumisa kwalesigaba lesi kutakwentiwa ngendlela lecabangela ngekcuphelela lokukhulu kutiphatsa kahle kanye nemtsetfo; kufake ekhatsi kuhlonipha— 25
- (a) lilungelo lemuntfu, kuhlonishwa kanye nekuvelwa kwesitfunti sakhe;
 - (b) lilungelo lemuntfu lekukhululeka kanye nekuphepha; kanye 30
 - (c) nelilungelo lemuntfu lekuba ngasese kwakhe yena matfupha.
- (8) Umuntfu losebentisa incwadzi yesigunyato ngekumisa kwalesigaba lesi, masinyane ngembikwekutsi acalise umsebenti wakhe—
- (a) utatisho kutsi ungubani kulomuntfu lophetse lawo mabala, nangabe lowo muntfu akhona, futsi anike lowo muntfu ikhophi yaleyo ncwadzi yesigunyato kumbe, nangabe lowo muntfu angekho, utawunamatselisa leyo khophi endzaweni lebonakalako kulawo mabala; futsi 35
 - (b) anikete lowo muntfu, nangabe lowo muntfu amcelile kutsi ente njalo, iminingwane lemayelana neligunya lakhe lekusebentisa leyo ncwadzi yesigunyato. 40
- (9) (a) Sisebenti sahumende lesibukene netifikinamtfwalo lesibukene netifikinamtfwalolesibukene netifikinamtfwalo, gaphandle kwencwadzi yesigunyato, singangena kunobe nguwaphi emabala, lawo lekungesiwo indlu yemuntfu lahlala kuyo, futsi basebentise lamandla lekubhekiswe kuwo esigabenincane(5)(a) na (c)—
- (i) nangabe lomuntfu lonelilungelo lekwenza njalo akuvumela loko kungena, kusesha, kutsatsa kanye nekususa intfo letsite; kumbe 45
 - (ii) nangabe leso sisebenti ngesizatfu lesivakalako sikhola kutsi—
- (aa) lencwadzi yesigunyato ledzingekile sitayitfolala ngekumisa kwesigabancane (5) nangabe bekatayicela; kanye nekutsi
 - (bb) kwephuta lokutawubangelwa kufuna nobe nguyiphi leyo ncwadzi yesigunyato kutakwenta injongo yaloko kungena, kusesha, kutsatsa kanye nekususa intfo letsite kufane nekudlala ngesikhatsi. 50
- (b) Nobo ngukuphi kungena kanye nekusesha ngekumisa kwapharagrafu (a) kutakwentiwa emini, ngaphandle kwekutsi kwenta njalo ebusuku kulungile futsi kudzingekile. 55
- (10) (a) Nobo ngubani umuntfu lotawungena lapho futsi aseshe nobo nguwaphi emabala ngekugunyatwa yincwadzi yesigunyato lekhishwe ngekumisa kwesigabancane (5) kumbe ngaphansi kwetibonelelo tesigabancane (9), angasebentisa emandla njengaloko kungadzingeka nangabe avinjelwa kutsi angene futsi aseshe.
- (b) Akukho muntfu lotawungena kuwo futsi aseshe emabala ngaphandle kwekutsi asho kuvakale kutsi ufuna kungena kulawo mabala futsi ngaphandle kwekutsi uyatisile inhloso yekungena kwakhe, ngaphandle kwekutsi lowo muntfu unesizatfu lesivakalako sekucabanga kutsi kukhona lokutsite lokungahle kushatjalaliswe kumbe kukhona 60

or a person put at risk of bodily harm if such access is first demanded and such purpose is first notified.

(11) If, during the execution of a warrant or the conducting of a search in terms of this section, a person claims that a thing found on or in the *premises* concerned contains privileged information and refuses its inspection or removal, the person executing the warrant or conducting the search shall, if he or she is of the opinion that the thing contains information which is relevant to the investigation and that such information is necessary for the investigation, request a person designated by a *Court* which has jurisdiction to seize and remove that thing for safe custody until a *Court* has made a ruling on the question whether the information concerned is privileged or not.

(12) A warrant issued in terms of this section may be issued on any day and shall be in force until—

- (a) it is executed;
 - (b) it is cancelled by the person who issued it or, if such person is not available, by a person with similar authority;
 - (c) the expiry of one month from the day of its issue; or
 - (d) the purpose for the issuing of the warrant has lapsed,
- whichever may occur first.

(13) In consultation with the *Minister* and through diplomatic channels, the *Department* may obtain permission from the relevant authority of a *foreign country* to receive evidence or gather information in or from that country.

(14) When exercising powers under this section, an immigration officer shall clearly identify him or herself as such by means of adequate identification.

Deportation and detention of *illegal foreigners*

34. (1) Without need for a warrant, an immigration officer may arrest an *illegal foreigner* or cause him or her to be arrested, and shall, irrespective of whether such *foreigner* is arrested, deport him or her or cause him or her to be deported and may, pending his or her *deportation*, detain him or her or cause him or her to be detained in a manner and at the place under the control or administration of the *Department* determined by the *Director-General*, provided that the *foreigner* concerned—

- (a) shall be notified in writing of the decision to *deport* him or her and of his or her right to appeal such decision in terms of *this Act*;
- (b) may at any time request any officer attending to him or her that his or her detention for the purpose of *deportation* be confirmed by warrant of a *Court*, which, if not issued within 48 hours of such request, shall cause the immediate release of such *foreigner*;
- (c) shall be informed upon arrest or immediately thereafter of the rights set out in the preceding two paragraphs, when possible, practicable and available in a language that he or she understands;
- (d) may not be held in detention for longer than 30 calendar days without a warrant of a *Court* which on good and reasonable grounds may extend such detention for an adequate period not exceeding 90 calendar days, and
- (e) shall be held in detention in compliance with minimum *prescribed* standards protecting his or her dignity and relevant human rights.

umuntfu langahle alimale emtimbeni nangabe atawucala ngekusho kutsi ufuna kungena nekutsi uhlose kwentani.

(11) Nangabe ngalesikhatsi kusetjentiswa incwadzi yesigunyato kumbe kusesha emabala ngekumisa kwalesigaba lesi, umuntfu atsi intfo letfolwe lapho kumbe ekhatsi *emabalen*i lekukhulunywa ngawo icuketse lwati lekungakafaneli lwatiwe nobe ngubani, futsi ala kutsi ihlolwe kumbe isuswe, lomuntfu losebentisa leyo ncwadzi yesigunyato kumbe loseshako, nangabe kungumbono wakhe kutsi leyontfo icuketse lwati loluphatselene naloluphenyo nekutsi lolo lwati ludzingekile kulolo luphenyo, utawucala umuntfu lotfunywe *liKhotho* lelangamele lapho kutsi atsatse futsi asuse leyontfo ayigcine iphephile kuze kube sikhatsi lapho *liKhotho* selente sincumo mayelana nekutsi ingabe lolo lwati lekukhulunywa ngalo alukafaneli kutsi lwatiwe nobe ngubani na kumbe cha.

(12) Incwadzi yesigunyato lekhishwe ngekumisa kwalesigaba ingakhishwa nganobe nguliphi lilanga futsi itawsebenta kuze kube sikhatsi lapho—

- (a) seyisetjentiwe; kumbe
- (b) seyikhanselwe ngumuntfu loyikhiphile kumbe, nangabe lowo muntfu akatfolakali, seyikhanselwe ngumuntfu lonemandla lafana newalowo muntfu loyikhanselile; kumbe
- (c) sekuphele inyanga yinye kusukela ngelilanga leyakhishwa ngalo; kumbe
- (d) injongo incwadzi yesigunyato lekhishelwe yona seyiphelelwe sikhatsi; kumbe

kungaba nobe ngukuphi kwaloku lokungenhla lokwenteke kucala.

(13) Ngekubonisana ne*Ndvuna* kanye nangekusebentisa tindlela emave lehlukene lachumana ngato, *liTiko* lingatfoli imvume yakulelinye live kulabo labaphetse yekutsi lemukele bufakazi kumbe yekuyofuna lwati ngekhati kulelove kumbe yekuyolucela lwati kulelove.

(14) Ngalesikhatsi sisebentisa emandla aso ngaphansi kwalesigaba, *sisebenti sahumumende lesibukene netifikinamtfwalo* utatisho kuvakale kahle kutsi *usisebenti sahumumende lesibukene netifikinamtfwalo* ngekutatisha ngendlela leyenele.

Kubuyiselwa kwemuntfu eveni lakubo kanye nekuvalelwa kwetichamuki letingekho emtsetfweni

34. (1) Ngaphandle kwekudzinga incwadzi yesigunyato, *sisebenti sahumumende lesibukene netifikinamtfwalo* singabopha *sichamuki lesingekho emtsetfweni* kumbe sibangele kuboshwa kwaso, futsi, akusho lutfo kutsi lesi *sichamuki* siboshiwe kumbe cha, sitawubuyisela lowo muntfu *eveni lakubo* kumbe sibangele *kubuyiselwa* kwalowo muntfu *eveni lakubo*, futsi ngalesikhatsi kusolidzelwe *kubuyiselwa kwemuntfu eveni lakubo*, sitawuvalela lowo muntfu kumbe sibangele kuvalelwa kwakhe ngendlela kanye nasenzaweni lokungaphansi futsi lokuphetfwe *liTiko* leshiwo ngum*Condzisijikelele*, ingce nje kwateka kutsi lesi *sichamuki* lesicondzene naloko—

- (a) sitawubhalelwa satiswe ngesizatzu *sekubuyiselwa* kwaso *eveni lakubo* kanye nangelilungelo laso lekuenta sikhalo ngaleso sincumo ngekumisa kwalom*Tsetfo*;
- (b) nobe kunini singacela nobe ngusiphi *sisebenti sahumumende lesibukene netifikinamtfwalo* lesibukene nedzaba yaso kutsi lokuvalelwa kwaso ngetinjongo *tekubuyiselwa kwemuntfu eveni lakubo* akucinisekiswe ngencwadzi yesigunyato yeli*Khotho*, lekutakutsi nangabe leyo ncwadzi itawuhlala ingaphumi kungakapheli emahora la-48 sentiwe lesi sicelo, kubangele kutsi lesi *sichamuki* sikhululwe ngaso sona lesi sikhatsi;
- (c) sitakwatiswa ngalesikhatsi siboshwa, kumbe masinyane ngemvakwaloko, ngemalungelo lendlalwe kulamapharagrafu lamabili lendvulelele ngelulwimi lesiluvako, nangabe loko kuyakhonakala kutsi kwenteke, akhona emandla ekukwenta futsi ukhona longakwenta;
- (d) asinawugcinwa eluvalelweni sikhatsi lesingetulu kwemalanga ekhalenda la-30 ngaphandle kwencwadzi yesigunyato yeli*Khotho* lona lelingasengeta sikhatsi saloko kuvalelwa ngesikhatsi lesenele lesingendluli emalanga ekhalenda la-90, nangabe linesizatzu lesihle nalesivakalako sekwenta njalo; futsi
- (e) sitawugcinwa eluvalelweni ngekuhambisana nemibandzela lesezingeni lelincane kwekugcina lamisiwe ekuvikelwa kwesitfunti saso kanye nemalungelo eluntfu aso lekufanele ahlonishwe etindzabeni letinjengaleto.

(2) The detention of a person in terms of *this Act* elsewhere than on a *ship* and for purposes other than his or her *deportation* shall not exceed 48 hours from his or her arrest or the time at which such person was taken into custody for examination or other purposes, provided that if such period expires on a non-court day it shall be extended to four p.m. of the first following court day.

(3) The *Department* may order a *foreigner* subject to *deportation* to deposit a sum sufficient to cover in whole or in part the expenses related to his or her *deportation*, detention, maintenance and custody and an officer may in the *prescribed* manner enforce payment of such deposit.

(4) Any person who fails to comply with an order made in terms of subsection (3) shall be guilty of an offence and liable on conviction to a fine not exceeding R20 000 or to imprisonment not exceeding 12 months.

(5) Any person other than a *citizen* or a *resident* who having been—

(a) removed from the *Republic* or while being subject to an order issued under a law to leave the *Republic*, returns thereto without lawful authority or fails to comply with such order; or

(b) refused *admission*, whether before or after the commencement of *this Act*, has entered the *Republic*,

shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding 12 months and may, if not already in detention, be arrested without warrant and deported under a warrant issued by a *Court* and, pending his or her removal, be detained in the manner and at the place determined by the *Director-General*.

(6) Any *illegal foreigner* convicted and sentenced under *this Act* may be deported before the expiration of his or her sentence and his or her imprisonment shall terminate at that time.

(7) On the basis of a warrant for the removal or release of a detained *illegal foreigner*, the person in charge of the prison concerned shall deliver such *foreigner* to that immigration officer or police officer bearing such warrant, and if such *foreigner* is not released he or she shall be deemed to be in lawful custody while in the custody of the immigration officer or police officer bearing such warrant.

(8) A person at a *port of entry* who has been notified by an immigration officer that he or she is an *illegal foreigner* or in respect of whom the immigration officer has made a declaration to the *master* of the *ship* on which such *foreigner* arrived that such person is an *illegal foreigner* shall be detained by the *master* on such *ship* and, unless such *master* is informed by an immigration officer that such person has been found not to be an *illegal foreigner*, such *master* shall remove such person from the *Republic*, provided that an immigration officer may cause such person to be detained elsewhere than on such *ship*, or be removed in custody from such *ship* and detain him or her or cause him or her to be detained in the manner and at a place determined by the *Director-General*.

(9) The person referred to in the preceding subsection shall, pending removal and while detained as contemplated in that subsection, be deemed to be in the custody of the *master* of such *ship* and not of the immigration officer or the *Department*, and such *master* shall be liable to pay the costs of the detention and maintenance of such person while so detained if the *master* knew or should reasonably have known that such person was an *illegal foreigner*, provided that—

(2) Kuvallelwa kwemuntfu ngekumisa kwalomTsetfo kulenye indzawo lengesiwo umkhumbi futsi lokunetinjongo letinye kungesiko kubuyiselwa kwemuntfu eveni lakubo akunakwendlula emahora la-48 kusukela ngalesikhatsi lomuntfu laboshwe ngaso kumbe kusukela ngalesikhatsi lowo muntfu atsetfwe ngaso ngulabasemtsetfweni kutsi ayophenywa kumbe atsatselwa letinye tinjongo, ingce nje kwateka kutsi nangabe leso sikhatsi siphela ngelilanga likhotho lelingasebenti ngalo lesikhatsi leso sitawengetwa kuze kube lihora le-4 ntsambama ngelilanga lelilandzelako likhotho lelisebenta ngalo. 5

(3) Litiko lingatjela sichamuki lekufuneka kutsi sibuyiselwe eveni lakubo kutsi sikhokhe idiphozi yesamba semali leyenele kukhokhela tonkhe tindleko kumbe incenye yato letimayelana nekubuyiselwa kwemuntfu eveni lakubo, kuvallelwa, kunakekelwa kanye nekugcinwa kwaso sivallelwe, futsi sisebenti sahumumende lesibukene netifikinamtfwalo singenta liciniso lekutsi leyo diphozi ibhadalwa ngendlela lemisiwe. 10

(4) Nobe ngubani lowehluleka kutfobela selayeto lesentiwe ngekumisa kwesigabancane (3) utakuba nelicala lewephula umtsetfo lekutakutsi angalahlwa licala afanelwe kukhokha inhlawulo lengendluli R20 000 kumbe kuvallelwa ejele sikhatsi lesitinyanga letingendluli kuleti-12. 15

(5) Nobe ngubani lomunye umuntfu longesiso sakhamuti kumbe umhlali lotakutsi ngemuva kwekutsi—

(a) asusiwe eRiphabliki kumbe ngalesikhatsi asengaphansi kweselayeto lesikhishwe ngaphansi kwemtsetfo sekutsi aphume eRiphabliki, aphindze abuyele eRiphabliki ngaphandle kweligunya lelismtfweni, kumbe ehluleka kutfobela leso selayeto; kumbe 20

(b) atsi alelwe kungeniswa, kungaba ngembikwako kumbe ngemuva kwekucalisa kusebenta kwalomTsetfo, angene eRiphabliki,

utakuba nelicala lekwephula umtsetfo lekutakutsi angalahlwa licala afanelwe kukhokha inhlawulo kumbe kuvallelwa ejele sikhatsi lesitinyanga letingendluli kuleti-12, futsi, nangabe angekho eluvallelweni, aboshwe ngaphandle kwencwadzi yesigunyato futsi abuyiselwe eveni lakubo ngaphansi kwencwadzi yesigunyato lekhishwe liKhotho, futsi, ngalesikhatsi kusalandzelwe kukhishwa kwakhe, avaluelwe ngaleyo ndlela nakuleyo ndzawo leshiwo ngumCondzisijikelele. 30

(6) Nobe ngusiphi sichamuki lesingekho emtsetfweni lesilahlwe licala futsi sanikwa sigwebo ngaphansi kwalomTsetfo, singabuyiselwa eveni lakubo ngembikwekuphela kwesigwebo saso, futsi sikhatsi lesidvonsa sona ejele sitawupheliswa ngaleso sikhatsi.

(7) Ngesizatfu sekutsi kukhona incwadzi yesigunyato sekukhishwa kumbe kukhululwa kwesichamuki lesingekho emtsetfweni, umuntfu lophetse lijele lapho sichamuki sivallelwe khona utakwetfula leso sichamuki kuleso sisebenti sahumumende lesibukene netifikinamtfwalo kumbe liphoyisa labaphetse leyo ncwadzi yesigunyato, futsi nangabe leso sichamuki singakhululwa, sitawtsatfwa kwekutsi siselugcinweni lolusemtsetfweni ngalesikhatsi siselugcinweni lwalesisebenti sahumumende lesibukene netifikinamtfwalo kumbe liphoyisa labaphetse leyo ncwadzi yesigunyato. 35 40

(8) Umuntfu losesikhumulweni sekungena eveni lowatiswe sisebenti sahumumende lesibukene netifikinamtfwalo kutsi usichamuki lesingekho emtsetfweni kumbe loyo muntfu sisebenti sahumumende lesibukene netifikinamtfwalo lesente simemetelo macondzana naye esikhulwini lesiphetse lomkhumbi sichamuki lesifike ngawo sekutsi lowo muntfu usichamuki lesingekho emtsetfweni, utawuvallelwa nguleso sikhulu kulowo mkhumbi futsi, ngaphandle kwekutsi leso sikhulu lesiphetse umkhumbi sitjelwe sisebenti sahumumende lesibukene netifikinamtfwalo kutsi lowo muntfu kutfolakele kwekutsi akasiso sichamuki lesingekho emtsetfweni, leso sikhulu lesiphetse umkhumbi sitamsusa lowo muntfu eRiphabliki, ingce nje kwateka kutsi sisebenti sahumumende lesibukene netifikinamtfwalo sitakwenta kwekutsi lowo muntfu uvallelwa kulenye indzawo lekungesiyo lomkhumbi, kumbe simtsatse aseselugcinweni simsuse kulowo mkhumbi futsi simvalele kumbe sente kutsi avaluelwe ngaleyo ndlela kanye nakuleyo ndzawo lencunywe ngumCondzisijikelele. 45 50

(9) Lomuntfu lekubhekiswe kuye kulesigabancane lesendvulela lesi, ngalesikhatsi kusalandvwe kususwa kwakhe nangalesikhatsi avaluelwe njengaloku kucatjangelwa kuleso sigabancane, utawutsatfwa kwekutsi uselugcinweni lwesikhulu lesiphetse umkhumbi salowo mkhumbi, hhayi sisebenti sahumumende lesibukene netifikinamtfwalo lesibukene kumbe liTiko, futsi leso sikhulu lesiphetse umkhumbi sitawufaneleka kutsi sikhokhe tindleko taloko kuvallelwa kanye nekunakekelwa kwalowo muntfu ngalesikhatsi avaluelwe kanjalo, nangabe lesikhulu lesiphetse umkhumbi besati kumbe kulindzeleke kutsi besifanele kwati kutsi lowo muntfu usichamuki lesingekho emtsetfweni, ingce nje kwateka kutsi— 55 60

- (a) if such *master* fails to comply with the provisions of that subsection, or if required to pay such costs, such *master* or the *owner* of such *ship* shall forfeit in respect of every person concerned a sum fixed by the immigration officer, not exceeding an amount *prescribed* from time to time;
- (b) the immigration officer may, before such person is removed from such *ship*, require the *master* or the *owner* of such *ship* to deposit a sum sufficient to cover any expenses that may be incurred by the *Department* in connection with the *deportation*, detention, maintenance and custody of such person, if there are grounds to believe that the *master* knew or should reasonably have known that such person was an *illegal foreigner*;
- (c) if such person is not removed from the *Republic* on the *ship* on which he or she was conveyed to the *Republic*, except by reason of not being an *illegal foreigner*, and if the *master* knew or should have known that such person was an *illegal foreigner*, the *owner* of that *ship* shall at the request of an immigration officer convey that person, or have him or her conveyed, free of charge to the State to a place outside the *Republic*, and any person, other than an immigration officer, charged by the *Department* with the duty of escorting that person to such place, shall be deemed to be an immigration officer while performing such duty; and
- (d) if the *owner* of such *ship* fails to comply with the provisions of this section, he or she shall forfeit in respect of each such person a sum fixed by the immigration officer, not exceeding an amount *prescribed* from time to time.
- (10) A person who escapes or attempts to escape from detention imposed under *this Act* shall be guilty of an offence and may be arrested without a warrant.

Ships

35. (1) Save for extraordinary circumstances necessitating otherwise, no *master* shall cause his or her *ship* to enter the *Republic* by landing or shoring at any place other than a *port of entry*.
- (2) An immigration officer or other authorised person employed by the *Department* may—
- (a) board any *ship* which is entering or has entered into any port and for good cause prohibit or regulate disembarkation from, or the offloading of, such *ship* in order to ascertain the *status* or *citizenship* of its passengers; and
- (b) request the person in control of a *port of entry* or any person acting under his or her authority to order the *master* to moor or anchor his or her *ship* in such port at such distance from the shore or landing place or in such position as he or she may direct.
- (3) The *master* of a *ship* entering a *port of entry* upon demand shall deliver to an immigration officer—
- (a) a list stating—
- (i) the names of all passengers on board the *ship*, classified according to their respective destinations; and
- (ii) such other details *prescribed* from time to time;
- (b) a list of stowaways, if any have been found;

- (a) nangabe leso *sikhulu lesiphetse umkhumbi* sehluleka kutfobela tibonelelo taleso sigabancane, kumbe nangabe sicelwa kutsi sikhokhe leto tindleko, leso *sikhulu lesiphetse umkhumbi* kumbe *umnikati* walowo *mkhumbi* sitawulahlekelwa macondzana nemuntfu ngamunye lokulesimo lesi samba semali lesincunye *sisebenti sahumumende lesibukene netifikinamtfwalo*, lesingendluli samba lesimiswe *ngesikhatsi nesikhatsi*; 5
- (b) *sisebenti sahumumende lesibukene netifikinamtfwalo*, ngembikwekutsi lowo muntfu asuswe kulowo *mkhumbi*, sitawucela *sikhulu lesiphetse umkhumbi* kumbe *umnikati wemkhumbi* kutsi akhokhe idiphozi yesamba semali leyenele kukhokhela nobe ngutiphi tindleko *liTiko* lelingahle lingene kuto mayelana nekubuyiselwa *kwemuntfu eveni lakubo*, kuvalelwa, kunakekelwa kanye nekugcinwa kwalowo muntfu, nangabe kukhona tizatfu tekukholelwa kutsi *lesikhulu lesiphetse umkhumbi* besati kumbe kulindzeleke kutsi besifanele kwati kutsi lowo muntfu *usichamuki lesingekho emtsetfweni*; 10
- (c) nangabe lowo muntfu akasuswa *eRiphabliki ngalomkhumbi lomtfwele* wamletsa khona, ngaphandle kwalapho sizatfu sekuta kwakhe *eRiphabliki* bekungesiko kutekuba *sichamuki lesingekho emtsetfweni*, futsi nangabe *sikhululu lesiphetse umkhumbi* besati kumbe bekufanele ngabe satile kutsi lowo muntfu *usichamuki lesingekho emtsetfweni*, *umnikati* walowo *mkhumbi*, nangabe acelwa *sisebenti sahumumende lesibukene netifikinamtfwalo*, utawutfwala lowo muntfu kumbe ente kutsi atfwalwe, ngaphandle kwekutsi *umBuso* ukhokhe lutfo, amyise endzaweni lengaphandle kwe *Riphabliki*, futsi nanobe ngumuphi umuntfu lomunye longesiso *sisebenti sahumumende lesibukene netifikinamtfwalo* lowo *liTiko* lelimnike umsebeni wekupheleketela lowo muntfu kuleyo ndzawo, utawutsatfwa kutsi *usisebenti sahumumende lesibukene netifikinamtfwalo* ngalesikhatsi enta lowo msebeni; futsi 25
- (d) nangabe *umnikati* walowo *mkhumbi* ehluleka kutfobela tibonelelo talesigaba, utawulahlekelwa macondzana nalowo nalowo umuntfu walabantfu labanjalo samba semali lesincunye *sisebenti sahumumende lesibukene netifikinamtfwalo* lesingendluli samba semali lesimisiwe *ngesikhatsi nesikhatsi*. 30
- (10) Umntfu lobalekako kumbe lozama kubaleka eluvalelweni lolwentiwe ngaphansi kwalomTsetfo utakuba nelicala lekwephula umtsetfo futsi utawuboshwa ngaphandle kwencwadzi yesigunyato. 35

Imikhumbi

35. (1) Ngaphandle kwekutsi kukhona timeko letingaketayeleki letenta kube nesidzingo sekwenta tintfo ngendlela leyehlukile, akukho *sikhulu lesiphetse umkhumbi* lesitakwenta kutsi *umkhumbi* waso ungene *eRiphabliki* ngekutsi uhlale phansi kumbe ume kunobe nguyiphi indzawo lenye lengesiso *sikhumulo sekungena eveni*. 40
- (2) *Sisebenti sahumumende lesibukene netifikinamtfwalo* kumbe lomunye umuntfu locashwe *liTiko*—
- (a) singakhwela kunobe ngumuphi *umkhumbi* longenako kumbe losongenile kunobe ngusiphi *sikhumulo*, futsi nasicabanga kusti loko kuyintfo lelungile, singabalela kumbe sente kutsi bantfu behliswe kumbe kwehliswe imphahla *kulomkhumbi* kuze kucinisekise kutsi siyini *simo semuntfu eveni* sebgibeli kumbe kutsi *batakhamuti* takuphi labantfu labagibele *lomkhumbi*; futsi 45
- (b) singacela umuntfu lophetse *sikhumulo sekungena eveni* kumbe nobe ngumuphi umuntfu losebenta ngaphansi kweligunya lalowo muntfu kutsi elayete *sikhulu lesiphetse umkhumbi* kutsi siwumise kumbe siwubophe *umkhumbi* waso kuleso *sikhumulo* ebangeni lelisukela elugwini lwelwandle kumbe lapho kuhlala phansi khona emabhanoyi lelitawushiwo ngiso, kumbe lisho kutsi *umkhumbi* awume ubheke ngakuphi. 50
- (3) *Sikhulu lesiphetse umkhumbi* longena *esikhumulweni sekungena eveni* nangabe sitjelwa kutsi sente njalo, sitakwetfula embikwesisebenti *sahulumende lesibukene netifikinamtfwalo*— 55
- (a) luhlu lolusho—
- (i) emagama abo bonkhe bagibeli labasemkhunjini, lolwehlukaniswe ngetindzawo letehlukahlukeni lapho bagibeli balibangise khona; kanye
- (ii) naleyo leminyane imininingwane lemiswe *ngesikhatsi nesikhatsi*; 60
- (b) luhlu lwebantfu lebebatifihle emkhunjini, nangabe kukhona labatfolakele;

- (c) a list of the crew and all other persons, other than passengers and stowaways, employed, carried or present on the *ship*; and
- (d) a return, under the hand of the medical officer of that *ship* or, if there is no such medical officer, under the hand of the *master* himself or herself, stating—
- (i) any cases of disease, whether infectious or otherwise, which have occurred or are suspected to have occurred upon the voyage;
 - (ii) the names of the persons who have suffered or are suffering from such disease;
 - (iii) details of any birth or death which occurred upon the voyage between such port and a previous port; and
 - (iv) any other *prescribed* matter or event,
- provided that such immigration officer may—
- (aa) exempt from the requirements of this subsection the *master* of a *ship* destined for any other port in the *Republic*, subject to compliance with the duty to deliver such lists or return at such port and with any directive such immigration officer may issue to the *master*; and
- (bb) if satisfied that a name should be added to or deleted from any of such lists, authorise such addition or deletion.
- (4) If a *ship* arrives at a *port of entry* with a passenger on board bound for a destination outside the *Republic* who is not on board when the *ship* leaves such port and has not been admitted, the *master* or the *owner* of that *ship* shall forfeit a sum fixed by the immigration officer within a *prescribed* limit.
- (5) An immigration officer may require the *master* of a *ship* to muster the crew of such *ship* on the arrival of such *ship* in any *port of entry* and again before it leaves such port.
- (6) The competent officer of customs at any harbour may refuse to give to the *master* of any *ship* clearance papers to leave that harbour unless he or she has complied with the provisions of *this Act* and produced a certificate of an immigration officer to that effect.
- (7) A *master* shall ensure that any *foreigner* conveyed to a *port of entry* for purposes of travelling to a *foreign country* holds a transit *visa*, if required.

Monitoring entries in *Republic* and exits

36. (1) The *Department* shall control the entry and exit of people through the *borders* of the *Republic* in order to ensure compliance with *this Act*, and may do so with the assistance of other organs of State.

(2) The *Department* may receive a delegation from the South African Revenue Service or the Commissioner therefor, the *Department* of Safety and Security, the *Department* of Defence or the *Department* of Finance enabling and mandating it to exercise powers and perform functions exercised or performed under any law by any of such *Departments* relating to the control of movement of people or goods across the *borders*, including ports of entry.

(3) By proclamation, the *President* may order that certain assets and human resources of the *Department* allocated to the control of entry and exit be placed under the control of the *Minister* of Defence to be deployed as determined by the *President* in terms of section 201 of the Constitution.

- (c) luhlu lwebantfu labasebenta emkhunjini kanye nabo bonkhe labanye bantfu lekungesibo bagibeli kumbe bantfu lebebatifihle emkhunjini, labo labasebentako, labatfwelwe ngumkhumbi kumbe labasekhatsi emkhunjini; kanye
- (d) nembiko longaphansi kwesandla sadokotela walowo *mkhumbi* kumbe, 5
 nangabe kungekho dokotela, longaphansi kwesandla sesikhulu *lesiphetse umkhumbi* sona ngekwaso, losho—
- (i) nobe ngutiphi tifo letibe khona, kungaba nguletitsatselwanako kumbe letinye, letivelile kumbe lekusolelwa kutsi tivelile ngaloluhambo;
- (ii) emagama ebantfu lebebaphetfwe kumbe labasolo baphetfwe nguleto 10
 tifo;
- (iii) iminingwane yebantfwana labatelwe kumbe bantfu labafile ngalesikhatsi saloluhambo emkhatsini waleso sikhumulo kanye nesikhumulo saphambilini; kanye
- (iv) nanobe nguyiphi lenye indzaba kumbe sehlakalo lokumisiwe, 15
 ingce nje kwateka kutsi leso *sisebenti sahumumende lesibukene netifikinamtfwalo*—
- (aa) sitawucolela *sikhulu lesiphetse umkhumbi* lesilibangise kulesinye sikhumulo lesiseRiphabliki kuletidzingakalo talesigabancane, nangabe kuyatiwa kwekutsi sitawukutfobela umtfwalo wekwetfula leto tihla kumbe umbiko lekukhulunywa ngako kuleso sikhumulo lesiya kuso kanye nanobe ngutiphi 20
 telayeto leso *sisebenti sahumumende lesibukene netifikinamtfwalo* lesingatikhiphela leso *sikhulu lesiphetse umkhumbi*; futsi
- (bb) nangabe senelisekile kutsi kuneligama lekumele lifakwe kumbe likhishwe kunobe ngutiphi leto tihlu, sitawugunyata loko kufakwa kumbe kukhishwa.
- (4) Nangabe *umkhumbi* ufika esikhumulweni *sekungena eveni* utfwele umgibeli 25
 lolibangise endzaweni lengaphandle kweRiphabliki longekho emkhunjini ngalesikhatsi *umkhumbi* usishiya leso sikhumulo futsi nalongakangeniswa, *sikhulu lesiphetse umkhumbi* kumbe *umnikati* walowo *mkhumbi* sitawulahlekelwa samba semali lesincunye *sisebenti sahumumende lesibukene netifikinamtfwalo* lesingendluli esambeni semali lesimisiwe. 30
- (5) *Sisebenti sahumumende lesibukene netifikinamtfwalo* singacela *sikhulu lesiphetse umkhumbi* kutsi sigcogcele ndzawonye bantfu labasebenta kulowo *mkhumbi* ngalesikhatsi ufika kunobe ngusiphi *sikhumulo sekungena eveni*, siphindze sente njalo ngembikwekutsi *umkhumbi* usishiye leso sikhumulo.
- (6) *Sisebenti sahumumende lesibukene* nempahla lechamuka kulamanye emave 35
 lesineligunya lesikunobe nguliphi litheku singala kunika *sikhulu lesiphetse umkhumbi* sanobe ngumuphi *umkhumbi* emaphepha lasivumela kutsi siphume kulelo litheku ngaphandle kwekutsi sitifobe tibonelelo talomTsetfo futsi saveta sitifiketi sesisebenti *sahumumende lesibukene netifikinamtfwalo* lesisho kutsi sikwentile loko.
- (7) *Sikhulu lesiphetse umkhumbi* sitawucinisekisa kutsi nobe ngusiphi *sichamuki* 40
 lesitfwelwe sayiswa esikhumulweni *sekungena eveni* ngenjongo yekuhamba siye *kulelinye live sinevisa yekwendlula*, nangabe iyadzingeka.

Kucashelwa kwalabangenako kanye nalabaphumako eRiphabliki

36. (1) *LiTiko* litawuphatsa kungena kanye nekuphuma kwebantfu eminceleni yeRiphabliki kuze licinisekise kutsi lomTsetfo uyatfotjelwa, futsi lingakwenta loku 45
 ngekusitwa nguleminywe *imitimba yemBuso*.

(2) *LiTiko* lingemukela licembu letitfunywa letibuya kubemSebenti waMalingena waseNingizimu Afrika (i-SARS) kumbe Nkomisheni wakhona, letibuya eTikweni lekuPhepha nekuVikeleka, eTikweni leteMphi kumbe eTikweni leteTimali, lelitakwenta kutsi *liTiko* likwati futsi lelitawunika *liTiko* ligunya lekusebentisa emandla lasetjentiswa 50
 kanye nekwenza umsebenzi lowentiwa ngulawo maTiko ngaphansi kwanobe ngumuphi umtsetfo lomayelana nekuphatfwa kwekuhamba kwebantfu kumbe impahla kwewe *imincele*, kufake ekhatsi *tikhumulo tekungena eveni*.

(3) Ngekusebentisa iphroklameshini, uMengameli angalayeta kutsi emafa latsite kanye nebantfu labasebentela *liTiko* lokubekelwe eceleni kutsi kubukane nekuphatfwa 55
 kwekungena kanye nekuphuma kwebantfu kuleli akufakwe ngaphansi kwelulawulo lweNdvuna yeteMphi kuze kuyiswe lapho uMengameli atsi akuye khona ngekumisa kwesigaba 201 semTsetfosisekelo.

IMMIGRATION COURTS

Immigration Courts

37. (1) Every magistrates' court is an *Immigration Court* for the purposes of *this Act* and shall have jurisdiction on any matter arising from the *application* of *this Act*, including, but not limited to— 5

- (a) the review of decisions of the *Department*;
- (b) any legal proceedings against the *Department*; and
- (c) any matter concerning *status*.

(2) Any legal proceedings arising from the *application* of *this Act* shall be dealt with as soon as is reasonably possible and the *Courts* must ensure that such proceedings are finalised without any unavoidable delay. 10

The *Rules Board* for *Courts* of Law established in terms of the *Rules Board* of *Courts* of Law Act, 1985 (Act No. 107 of 1985), shall as soon as reasonably possible after the commencement of *this Act* make rules aimed at facilitating the adjudication of any matter arising from *this Act* in a simplified and expeditious manner. 15

DUTIES AND OBLIGATIONS

Employment

38. (1) No person shall employ—

- (a) an *illegal foreigner*;
- (b) a *foreigner* whose *status* does not authorise him or her to be employed by such person; or 20
- (c) a *foreigner* on terms, conditions or in a capacity different from those contemplated in such *foreigner's status*.

(2) An *employer* shall make a good faith effort to ascertain that no *illegal foreigner* is employed by him or her or to ascertain the *status* or *citizenship* of those whom he or she employs. 25

(3) If it is proven, other than by means of the presumption referred to in subsection (5), that a person was employed in violation of subsection (1), it shall be presumed that the *employer* knew at the time of the employment that such person was among those referred to in subsection (1), unless such *employer* proves that he or she— 30

- (a) employed such person in good faith; and
- (b) complied with subsection (2), provided that a stricter compliance shall be required of any *employer* who employs more than five employees or has been found guilty of a prior offence under *this Act* related to this section.

(4) An *employer* employing a *foreigner* shall— 35

- (a) for two years after the termination of such *foreigner's* employment, keep the *prescribed* records relating thereto; and
- (b) report to the *Department*— 40
 - (i) the termination of such *foreigner's* employment; and
 - (ii) any breach on the side of the *foreigner* of his or her *status*.

(5) If an *illegal foreigner* is found on any *premises* where a business is conducted, it shall be presumed that such *foreigner* was employed by the person who has control over such *premises*, unless prima facie evidence to the contrary is adduced.

EMAKHOTHO ETIFIKINAMTFWALO***EmaKhotho etifikinamtfwalo***

37. (1) Ngetinjongo *talomTsetfo*, lelo nalelo khotho lamantji litakuba *liKhotho letiFikinamtfwalo* futsi litakwengamela nobe nguyiphi indzaba lesukela ekusetjentisweni *kwalomTsetfo*, kufake ekhatsi kepha kungagcini lapho—(2) 5
Kulesigabancane lesi kusungulwa *emaKhotho* etifikinamtfwalo latakwengamela kuphela futsi kube nguloko kodvwa nobe nguyiphi indzaba lesukela *ekusetjentisweni kwalomTsetfo*,

- (a) kubuyeketwa kwetincumo *teliTiko*;
- (b) nobe ngutiphi tinyatselo letitsatselwa *liTiko*; kanye 10
- (c) nanobe nguyiphi indzaba lephatselene nesimo *sesichamuki eveni*.

(2) Nobe ngutiphi tinchubo tangekwemtsetfo letichamuke ekusetjentisweni *kwalomTsetfo* kutawusetjentwa ngato mansinyane njengalokunekwenteka futsi *emaKhotho* kumele acinisekise kutsi leto tinchubo tiyaphetfwa ngaphandle kwekucitsa sikhatsi lokungagwenywa. 15

IBhodi yetiMiso temKhotho emTsetfo leyasungulwa ngekumisa kwemTsetfo weBhodi yetiMiso temaKhotho, 1985 (umTsetfo No. 107 wa-1985), masinyane ngemuva kwekucalisa kusebenta *kwalomTsetfo*, itakwenta timiso leticondze kwenganyelwa kwanobe nguyiphi indzaba lesukela *kulomTsetfo* ngendlela leyentiwa malula kanye nalephangisako. 20

TIBOPHO KANYE NEMTFWALO***Kucashwa***

38. (1) Akukho muntfu lotawucasha—

- (a) *sichamuki lesingekho emtsetfweni*;
- (b) *sichamuki* leso *simo sesichamuki eveni* saso singasigunyati kutsi sicashwe 25
ngulowo muntfu; kumbe
- (c) *sichamuki* ngaphansi kwetimeko, imibandzela kumbe esikhundleni lesehlukile kuloko lokucatjangelwe *simo sesichamuki eveni* saleso *sichamuki*.

(2) Ngekwetsemba kwekutsi utjelwe liciniso, *umcashi* utakwenta taba tekucinisekisa kutsi akukho *sichamuki lesingekho emtsetfweni* lesicashwe nguyi kumbe ente taba 30
tekucinisekisa kutsi ingabe siyini *simo sesichamuki eveni* salabantfu labacashwe nguyi kumbe kutsi ingabe *batakhamuti* yini.

(3) Nangabe kutfolakala bufakazi, ngaphandle kwalokwetsemba kwemuntfu kutsi utjelwa liciniso lekubekiswe kuko esigabenincane (5), bekutsi umuntfu ucashwe ngendlela leyephula tibonelelo tesigabancane (1), kutawutsatfwa kwekutsi *umcashi* 35
abati ngalesikhatsi amcasha lomuntfu kutsi ungulomunye walabantfu lekubhekiswe kubo esigabenincane (1), ngaphandle kwekutsi lowo *mcashi* avete bufakazi bekutsi yena—

- (a) abecashe lowo muntfu ngekwetsemba kutsi utjelwa liciniso; futsi
- (b) utitfobele tibonelelo tesigabancane (2), ingce nje kwateka kutsi 40
kutawudzingakala kutsi nobe ngumuphi *umcashi* locashe bantfu labengca kulabasihlanu kumbe lotfolwe anelicala lekutsi ngaphambilini uke wephula umtsetfo ngaphansi *kwalomTsetfo* ngendzaba lemayelana nalesigaba, utawuzama kuwutfobela kancono umtsetfo.

(4) *Umcashi* locashe *sichamuki*— 45

- (a) utawubeka imiculu lenemininingwane *lemisiwe* lephatselene naloko kucasha sikhatsi lesiminyaka lemibili ngemuva kwekutsi leso *sichamuki* sesayekela umsebenti; futsi
- (b) utawubikela *liTiko*— 50
 - (i) ngekuyekela umsebenti kwaleso *sichamuki*; kanye
 - (ii) nanobe ngukuphi kungahloniphi *simo sesichamuki eveni* lokwentiwe *sichamuki*.

(5) Nangabe *sichamuki lesingekho emtsetfweni* sitfolakala kunobe nguwaphi *emabala* lapho kwentiwa khona ibhizimisi, kutawutsatfwa kwekutsi leso *sichamuki* besicashwe ngulomuntfu langaphansi kwakhe lawo *mabala*, ngaphandle kwekutsi kuvetwe 55
bufakazi lobucinile lobuphikisa loko.

Learning institutions

39. (1) No learning institution shall knowingly provide training or instruction to—

- (a) an *illegal foreigner*;
- (b) a *foreigner* whose *status* does not authorise him or her to receive such training or instruction by such person; or
- (c) a *foreigner* on terms or conditions or in a capacity different from those contemplated in such *foreigner's status*.

(2) If an *illegal foreigner* is found on any *premises* where instruction or training is provided, it shall be presumed that such *foreigner* was receiving instruction or training from, or allowed to receive instruction or training by, the person who has control over such *premises*, unless *prima facie* evidence to the contrary is adduced.

Accommodation

40. (1) Any business offering overnight accommodation shall make a good faith effort to identify its customers as *citizens* or *status* holders and shall report in the *prescribed* form to the *Department* any failure to effect such identification.

(2) When subsection (1) is not complied with and an *illegal foreigner* is found on any *premises* referred to in that subsection, it shall be presumed that such *illegal foreigner* was harboured by the person who has control over such *premises*, unless *prima facie* evidence to the contrary is adduced.

Identification

41. When so requested by an immigration officer or a police officer any person shall identify himself or herself as a *citizen*, *resident* or *foreigner* when so requested by an immigration officer or a police officer, and if on reasonable grounds such immigration officer or a police officer is not satisfied that such person is entitled to be in the *Republic*, such immigration officer or a police officer may take such person into custody without a warrant and if necessary detain him or her in a *prescribed* manner and place until such person's *prima facie status* or *citizenship* is ascertained.

Aiding and abetting illegal foreigners

42. (1) Subject to *this Act*, and save for necessary humanitarian assistance, no person, shall aid, abet, assist, enable or in any manner help—

- (a) an *illegal foreigner*; or
- (b) a *foreigner* in respect of any matter, conduct or transaction which violates such *foreigner's status*, when applicable,

including but not limited to—

- (i) providing instruction or training to him or her, or allowing him or her to receive instruction or training;
- (ii) issuing to him or her a licence or other authorisation to conduct any business or to carry on any profession or occupation;
- (iii) entering into an agreement with him or her for the conduct of any business or the carrying on of any profession or occupation;
- (iv) conducting any business or carrying on any profession or occupation in cooperation with him or her;

Tikhungo tekufundza

39. (1) Akukho sikhungo sekufundza lesitakutsi sati kepha sente kutsi kuceceshwe kumbe kufundziswa—

- (a) *sichamuki lesingekho emtsetfweni*;
- (b) *sichamuki le simo sesichamuki eveni* saso singasigunyati kutsi sitfole 5
kuceceshwa kumbe kufundziswa nguleso sikhungo; kumbe
- (c) *sichamuki* ngaphansi kwetimeko kumbe imibandzela, kumbe esikhundleni lokwhlukile kuloko lokucatjangelelwe *simo sesichamuki eveni* saleso *sichamuki*.

(2) Nangabe *sichamuki lesingekho emtsetfweni* sitfolakala kunobe nguwaphi *emabala* 10
lapho kuceceshwa kumbe kufundziswa khona bantfu, kutawutsatfwa kwekutsi lesi *sichamuki* besitfole kuceceshwa kumbe kufundziswa kumbe besivunyelwe kutfole kuceceshwa kumbe kufundziswa ngulomuntfu langaphansi kwakhe lawo *mabala*, ngaphandle kwekutsi kuvetwe bufakazi lobucinile lobuphikisa loko.

Indzawo yekuhlala

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40. (1) Nobe nguyiphi ibhizimisi leniketa indzawo yekuhlala itakwenta taba, ngekwetsemba kutsi itjelwa liciniso, tekutfole kutsi ingabe emakhasimende ayo atakhamuti yini kumbe ingabe siyini *simo sesichamuki eveni* sawo, futsi itawubikela *liTiko* efofini lelimisiwe nangabe yehlulekile kutfole lolo lwati.

(2) Nangabe sigabancane (1) singakatfotjelwa futsi nangabe kutfolakele *sichamuki* 20
lesingekho emtsetfweni kunobe nguwaphi *emabala* lekubhekiswe kuwo kuleso sigabancane, kutawutsatfwa kwekutsi lesi *sichamuki lesingekho emtsetfweni* besikhuseliswe ngulomuntfu langaphansi kwakhe lawo *mabala*, ngaphandle kwekutsi kuvetwe bufakazi lobucinile lobuphikisa loko.

Kutatisa kutsi ungubani

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41. Nobe ngumuphi umuntfu utatatisa kutsi ingabe *usakhamuti*, ungumhlali kumbe *usichamuki* yini ngalesikhatsi umuntfu acelwa *sisebenti sahumumende lesibukene netetifikinamtfwalo* kumbe liphoyisa kutsi ente njalo, liphoyisa, futsi nakukhona sizatfu lesivakalako lesenta lesi *sisebenti sahumumende lesibukene netifikinamtfwalo* kumbe 30
liphoyisa singenetiseki kwekutsi lesi *sichamuki* sinelilungelo lekuba se*Riphabliki*, lesi *sisebenti sahumumende lesibukene netifikinamtfwalo* singayisa lowo muntfu eluvallelweni ngaphandle kwencwadzi yesigunyato, futsi nangabe sikhona sidzingo saloko, simvalele ngendlela kanye nasendzaweni lokumisiwe kuze kube sikhatsi lapho sekutfolakele bufakazi lobucinile bekucinisekisa *simo sesichamuki eveni* salowo muntfu kumbe bekutsi *usakhamuti*. 35

Kunika lusito kanye nekushoshotela tichamuki letingekho emtsetfweni

42. (1) Ngaphansi kwalomTsetfo, nafutsi ngaphandle kwelusito lwekukhombisa buntfu, akukho muntfu lotawunika lusito, ashoshotele, elekelele kumbe asite nganobe nguyiphi indlela—

- (a) *sichamuki lesingekho emtsetfweni*; kumbe 40
- (b) *sichamuki* macondzana nanobe nguyiphi indzaba, kutiphatsa, kutsengiselana kumbe kwenta ibhizimisi naso lokungahambisani nesimo *sesichamuki eveni* kwaleso *sichamuki*, nangabe lesi sento simayelana naloko, kuufake ekhatsi kepha kungagcini lapho—
 - (i) kwenta kutsi *sichamuki* sitfole kufundziswa kumbe kuceceshwa kumbe 45
kusivumela kutsi sitfole kufundziswa kumbe kuceceshwa;
 - (ii) kukhiphela *sichamuki* ilayisensi kumbe lesinye sigunyato sekuchuba nobe nguyiphi ibhizimisi kumbe kwenta nobe ngumuphi umsebeni lofundzelwako kumbe sikhundla;
 - (iii) kwenta nesichamuki sivumelwano sekwenta nobe nguyiphi ibhizimisi 50
kumbe sekwenta nobe ngumuphi umsebeni lofundzelwako kumbe sikhundla;
 - (iv) kuchuba nobe nguyiphi ibhizimisi kumbe kwenta nobe nguwaphi umsebeni lofundzelwako kumbe sikhundla ngekubambisana nesichamuki; 55

- (v) assisting, enabling or in any manner helping him or her to conduct any business or carry on any profession or occupation;
- (vi) obtaining a licence or other authority for him or her or on his or her behalf to conduct any business or to carry on any profession or occupation;
- (vii) doing anything for him or her or on his or her behalf in connection with his or her business or profession or occupation;
- (viii) harbouring him or her, which includes providing accommodation; or
- (ix) letting or selling or in any manner making available any immoveable property in the *Republic* to him or her.

(2) In any criminal proceedings arising out of this section, it is no defence to aver that the *status* of the *foreigner* concerned, or whether he or she was an *illegal foreigner*, was unknown to the accused if it is proved that the accused ought reasonably to have known the *status* of the *foreigner*, or whether he or she was an *illegal foreigner*.

Obligation of *foreigners*

43. A *foreigner* shall—
- (a) abide by the terms and conditions of his or her *status*, including any terms and conditions attached to the relevant permit by the *Department* upon its issuance, extension or renewal; and
 - (b) depart upon expiry of his or her *status*.

Organs of State

44. When possible, any *organ of State* shall endeavour to ascertain the *status* or *citizenship* of the persons receiving its services and shall report to the *Department* any *illegal foreigner*, or any person whose *status* or *citizenship* could not be ascertained, advising through public notices or directly the person concerned of such reporting practice, provided that such requirement shall not prevent the rendering of services to which *illegal foreigners* and *foreigners* are entitled under the Constitution or any law, including the law of contract.

Other institutions

45. Prescribed institutions or persons other than organs of State may be required by regulation to endeavour to ascertain the *status* or *citizenship* of the persons with whom they enter into commercial transactions, as *prescribed*, and shall report to the *Department* any *illegal foreigner*, or any person whose *status* or *citizenship* could not be ascertained, provided that such requirement shall not prevent the rendering of services or performance to which *illegal foreigners* and *foreigners* are entitled under the Constitution or any law, including the law of contract.

- (v) kwelekelela *sichamuki*, kwenta kutsi sikwati kwenta ibhizimisi kumbe kuisita nganobe nguyiphi indlela kutsi sichube ibhizimisi kumbe sente nobe nguwpuphi umsebenti lofundzelwako kumbe sikhundla;
 - (vi) kutfolela *sichamuki* ilayisensi kumbe lesinye sigunyato kumbe ngekwenta loko egameni *lesichamuki* kuze sichube nobe nguyiphi ibhizimisi kumbe sente nobe nguwpuphi umsebenti lofundzelwako kumbe sikhundla; 5
 - (vii) kwentela *sichamuki* nobe yini kumbe ngekwenta loko egameni laso macondzana nanobe nguyiphi ibhizimisi yaso kumbe umsebenti lofundzelwako kumbe sikhundla; 10
 - (viii) kukhusela *sichamuki*, lokufaka ekhatsi kusinikela indzawo yekuhlala; kumbe
 - (ix) kucashisa kumbe kutsengisela *sichamuki*, kumbe ngekwenta nobe ngayiphi indlela kutsi sikwati kutfolela lapha e*Riphabliki* nobe nguyiphi imphahla lengasuki kulomhlabatsi leme kuwo. 15
- (2) Kunobe ngutiphi tinchubo telicala lebugebengu letisukela kulesigaba lesi, akunakwemukelelas kutsi umuntfu lobekwe licala ativikele ngekutsi abengati kutsi siyini *simo sesichamuki eveni* saleso *sichamuki* lekukhulunywa ngaso, kumbe kutsi bekusichamuki *lesingekho emtsetfweni* kumbe cha, nangabe bukhona bufakazi bekutsi lowo muntfu lobekwe licala kufanele kulindzela kutsi abesati *simo sesichamuki eveni* salesichamuki, kumbe kutsi *sichamuki lesingekho emtsetfweni* kumbe cha. 20

Loko lokungumtfwalo wetichamuki

43. (1) *Sichamuki*—

- (a) sitawutfolela timeko kanye nemibandzela kwesimo *sesichamuki eveni* saso, kufake ekhatsi nobe ngutiphi timeko kanye nemibandzela lokufakwe *liTiko* kuleyo mvume lecondzene naso ngalesikhatsi ikhishwa, yengetwa kumbe ivuselelwa; futsi 25
- (b) sitawuphuma e*Riphabliki* ngemuva kwekutsi sikhatsi sesimo *sesichamuki eveni* saso sesiphelile.

Imitimba yemBuso

44. Nangabe loko kunendlela yekutsi kwenteke, nobe nguwpuphi umtimba wemBuso, utawuphokophela kucinisekisa kutsi siyini *simo sesichamuki eveni* kumbe kutsi ingabe labantfu labatfolela lusito lwawo *batakhamuti* yini, futsi utawubikela *liTiko* nganobe ngusiphi *sichamuki lesingekho emtsetfweni*, kumbe nganobe ngumuphi umuntfu lesehlulekile kucinisekisa kutsi siyini *simo sesichamuki eveni* sakhe nobe kumbe kutsi ingabe lowo muntfu *usakhamuti* yini, futsi utakwatisa ngesatso sawonkhewonkhe kumbe watise lowo muntfu lotsintsekako matfupha ngaleyo nchubo yekubikela *liTiko*, ingce nje kwateka kutsi lesi sidzingakalo singeke sivimbele kutsi *tichamuki letingekho emtsetfweni* kanye *netichamuki* baniketwe lolusito lebanelilungelo lekulutfolela ngaphansi kwemTsetfosisekelo kumbe ngaphansi kwanobe nguwpuphi umtsetfo, kufake ekhatsi umtsetfo wekontilaki. 35 40

Letinye tikhungo

45. Tikhungo letimisiwe kumbe bantfu labamisiwe, lokungesiyo imitimba yemBuso, bangadzingakala ngekwetimiso kutsi baphokophele kucinisekisa kutsi siyini *simo sesichamuki eveni* kumbe kutsi ingabe *batakhamuti* yini labantfu leto tikhungo kumbe labo bantfu labatsengiselana nabo lokutsite kumbe labenta nabo ibhizimisi, njengaloku kumisiwe, futsi bawubikela *liTiko* nganobe ngusiphi *sichamuki lesingekho emtsetfweni* kumbe nganobe ngumuphi umuntfu lebehlulekile kucinisekisa kutsi siyini *simo sesichamuki eveni* sakhe kumbe kutsi ingabe lowo muntfu *usakhamuti* yini, ingce nje kwateka kutsi lesi sidzingakalo singeke sivimbele kutsi *tichamuki letingekho emtsetfweni* kanye *netichamuki* baniketwe lolusito kumbe kwentelwa lokutsite lebanelilungelo lekukutfolela ngaphansi kwemTsetfosisekelo kumbe ngaphansi kwanobe nguwpuphi umtsetfo, kufake ekhatsi umtsetfo wekontilaki. 45 50

MISCELLANEOUS

Immigration practitioners

46. (1) No one, other than an attorney, advocate or immigration practitioner, may conduct the trade of representing another person in the proceedings or procedures flowing from *this Act*. 5

(2) In order to be registered on a roll of immigration practitioners to be maintained by the *Department*, an immigration practitioner shall apply in the *prescribed* manner, producing evidence of the *prescribed* qualifications and paying any *prescribed* registration fee.

(3) After affording him or her a fair opportunity to be heard, the *Department* may withdraw the registration of an immigration practitioner who has contravened *this Act* or any *prescribed* duty. 10

Internal monitoring and controls

47. (1) The *Department* shall set up an internal anti-corruption unit charged with the task of preventing, deterring, detecting and exposing any instance of corruption, abuse of power, xenophobia and dereliction of duty by a person employed in the *Department*, provided that such unit shall— 15

(a) not oust the jurisdiction or the investigative authority of any other *organ of State*; and

(b) comprise specialized members seconded from time to time and on a rotating basis by the National Commissioner of the South African Police Service. 20

(2) The *Director-General* shall report to the *Minister* and inform the *Board* annually on—

(a) measures and proposals aimed at increasing the efficacy, efficiency and cost-effectiveness of the *Department*; and 25

(b) statistical data relating to the implementation of *this Act* and the *Department*.

(3) The *Board* shall utilise the information referred to in subsection (2) in its annual report to Parliament.

Foreigners erroneously allowed to enter *Republic*

48. No *illegal foreigner* shall be exempt from a provision of *this Act* or be allowed to sojourn in the *Republic* on the grounds that he or she was not informed that he or she could not enter or sojourn in the *Republic* or that he or she was admitted or allowed to remain in the *Republic* through error or misrepresentation, or because his or her being an *illegal foreigner* was undiscovered. 30

OFFENCES

35

Offences

49. (1) (a) Anyone who enters or remains in the *Republic* in contravention of this Act shall be guilty of an offence and liable on conviction to a fine or to imprisonment not exceeding three months.

(b) Any *illegal foreigner* who fails to depart when so ordered by the *Department*, shall be guilty of an offence and liable on conviction to a fine or to imprisonment not exceeding nine months. 40

(2) Anyone who knowingly assists a person to enter the *Republic* in contravention of this Act shall be guilty of an offence and liable on conviction to a fine or to imprisonment not exceeding one year. 45

LOKWA NALOKWA

Tati ngetindzaba tetifikinamtfwalo

46. (1) Akukho lomunye umuntfu ngaphandle kwemmeli, i-advokhethi kumbe sati setetifikinamtfwalo lekumele ahwebe ngekumelela lomunye umuntfu etindzabeni kumbe etinchutjeni letisukela kulomTsetfo. 5
- (2) Kuze sikwati kubhalisa eluhlweni lwetati ngetindzaba tetifikinamtfwalo lelitawugcinwa *liTiko*, sati ngetindzaba tetifikinamtfwalo sitakwenta sicelo ngendlela lemisiwe, livete bufakazi betimphawumfundvo letibekiwe futsi sikhokhe nobe ngutiphi timali tekubhalisa letimisiwe.
- (3) Ngemuva kwekusinika litfuba lelenele lekutsi atikhulumele, *liTiko* lingakuhocisa kubhaliswa kwesati setindzaba tetifikinamtfwalo lesephule lomTsetfo kumbe nobe ngusiphi sibopho lesimisiwe. 10

Kucaphela kutsi tintfo tihamba kahle kanye nekuphatsa kwangekhatsi

47. (1) *LiTiko* litawusungula licembu langekhatsi lekulwa nenkhohlakalo lelitawunikwa umsebenzi wekuvimbela, kuyekelisa, kutfola umkhondvo kanye nekudzalula nobe ngutiphi tehlakalo tenkhohlakalo, kusebentisa kabi emandla, kutondza tichamuki kanye nekungenti umsebenzi wabo bantfu labacashwe *liTiko*, ingce nje nangabe lelo cembu— 15
- (a) lingenakwemuka lwengamelo kumbe ligunya lekuphenya kwanobe ngu-wuphi lomunye umtimba wemBuso; futsi 20
- (b) litakuba nemalunga lakhetsekile latfunyelwe kuyewusebenta lapho ngesikhatsi nesikhatsi nafutsi lasbenta ngekuntjintjana, latfunywe nguNkomisheni waVelonkhe weMsebenzi wemaPhoyisa waseNingizimu Afrika (i-SAPS).
- (2) *UmCondzisijikelele* utawubikela iNdvuna futsi atise iBhodi ngalowo nalowo mnyaka mayelana— 25
- (a) netinyatselo kanye netiphakamiso leticonde kukhuphula emandla ekusebenta, likhono kanye nekusebentisa timali ngendlela yekonga kweliTiko; kanye
- (b) neminningwane yemalunga lephatselene nekusetjentiswa kwalomTsetfo kanye neliTiko. 30
- (3) iBhodi itawusebentisa lolwati lekubhekiswe kulo esigabenincane (2) embikweni wayo wangalowo nalowo mnyaka leyiwetfula ePhalamende.

Tichamuki letivunyelwe ngeliphuta kungena eRiphabliki

48. Akukho sichamuki lesingekho etsetfweni lesitawucolwa ekutseni sibopheleleke esibonelelweni salomTsetfo kumbe lesitawuvunyelwa kuhamba sivakashe kwesikhashana eRiphabliki ngetizatfu tekutsi sona asizange sitjelwe kutsi asinawungena kumbe asinawuhamba sivakashe kwesikhashana eRiphabliki, kumbe kutsi sangeniswa kumbe savunyelwa kuhlala eRiphabliki ngeliphutsa kumbe ngesiphosiso, kumbe ngesizatfu sekutsi akuzange kuvele ebaleni kwekutsi sona sisichamuki lesingekho emtsetfweni. 35 40

TEPHULOMTSETFO

Tephulomtsetfo

49. (1) (a) Noba ngubani longena kumbe lohlalako angaphumi eRiphabliki ngendlela leyephula lomTsetfo utakuba nelicala lekwephula umtsetfo lekutakutsi angahlalwa licala abopheleleke kukhokha inhlawulo kumbe avalelwe ejele sikhatsi lesingendluli tinyanga letintsatfu. 45
- (b) Noba ngusiphi sichamuki lesingekho emtsetfweni lesehlulekako kuphuma kuleli ngalesikhatsi sitjelwa liTiko kutsi asente njalo, sitakuba nelicala lekwephula umtsetfo lekutakutsi singahlalwa licala sibopheleleke kukhokha inhlawulo kumbe sivalalelwe ejele sikhatsi lesingendluli tinyanga letiyimfica. 50
- (2) Noba ngubani lotsi ati kepha elekelele umuntfu kutsi angene eRiphabliki ngendlela leyephula lomTsetfo utakuba nelicala lekwephula umtsetfo lekutakutsi angahlalwa licala abopheleleke kukhokha inhlawulo kumbe avalelwe ejele sikhatsi lesingendluli umnyaka munye.

(3) Anyone who knowingly employs an illegal foreigner or a foreigner in violation of this Act shall be guilty of an offence and liable on conviction to a fine or to imprisonment not exceeding one year, provided that such person's second conviction of such an offence shall be punishable by imprisonment not exceeding two years or a fine, and the third or subsequent convictions of such offences by imprisonment not exceeding three years without the option of a fine. 5

(4) Anyone who intentionally facilitates an illegal foreigner to receive public services to which such illegal foreigner is not entitled shall be guilty of an offence and liable on conviction to a fine.

(5) Any civil servant who provides false or intentionally inaccurate or unauthorised documentation or benefit to an illegal foreigner, or otherwise facilitates such illegal foreigner to disguise his or her identity or status, or accepts any undue financial or other consideration to perform an act or to exercise his or her discretion in terms of this Act, shall be guilty of an offence and liable on conviction to a fine or to imprisonment not exceeding two years, provided that if such civil servant is employed by the Department such offence shall be punishable by imprisonment not exceeding three years without the option of a fine. 10 15

(6) Anyone failing to comply with one of the duties or obligations set out under sections 42 to 46 of this Act shall be guilty of an offence and liable on conviction to a fine or to imprisonment not exceeding 18 months. 20

(7) Anyone participating in a conspiracy of two or more persons to conduct an activity intended to violate this Act repeatedly shall be guilty of an offence and liable on conviction to a fine or to imprisonment not exceeding four years, provided that if part of such activity is conducted or intended to be conducted in a foreign country the offence shall be punishable by imprisonment not exceeding four years without the option of a fine. 25

(8) Anyone who wilfully or through gross negligence produces a false certification contemplated by this Act shall be guilty of an offence and liable on conviction to a fine or to imprisonment not exceeding one year, and shall be suspended from the relevant professional association for a period not exceeding two years. 30

(9) Anyone, other than a civil servant, who produces a document purporting to be a document issued or administered by the Department shall be guilty of an offence and liable on conviction to a fine or to imprisonment not exceeding two years.

(10) Anyone who through offers of financial or other consideration or threats, compels or induces an officer to contravene this Act or to breach such officer's duties shall be guilty of an offence and liable on conviction— 35

(a) to a fine or to imprisonment not exceeding 18 months; or

(b) if subsequently such officer in fact contravenes this Act or breaches his or her duties, to a fine or to imprisonment not exceeding three years.

(11) Anyone guilty of the offence contemplated in section 37(10) shall be liable on conviction to a fine or to imprisonment not exceeding six months. 40

(12) A Court may make an order as to costs in favour of the Department to the extent necessary to defray the costs referred to in section 37(3) against—

(3) Nobe ngubani lotsi ati kepha acashe *sichamuki lesingekho emtsetfweni* kumbe *sichamuki* ngendlela leyephula *lomTsetfo*, utakuba nelicala lekwephula umtsetfo lekutakutsi angalahlwa licala abopheleleke kukhokha inhlawulo kumbe avalelwe ejele sikhatsi lesingendluli umnyaka munye, ingce nje kwateka kutsi kulahlwa licala kwesibili kwalowo muntfu ngaleso sephulomtsetfo kutawujeziswa ngekuvalelwa ejele sikhatsi lesingendluli iminyaka lemibili kumbe inhlawulo, futsi kulahlwa licala kwesitsatfu kwalowo muntfu kumbe lokulandzela loko ngaleso sephulomtsetfo kona kujeziswe ngekuvalelwa ejele sikhatsi lesingendluli iminyaka lemitsatfu ngaphandle kwekunikwa litfuba lekukhokha inhlawulo. 5

(4) Nobe ngubani lotsi ngesibomu ente kutsi *sichamuki lesingekho emtsetfweni* semukele lolo lusito lwahulumende leso *sichamuki* lesingenalo lilungelo lekulufola, utakuba nelicala lekwephula umtsetfo lekutakutsi angalahlwa licala abopheleleke kukhokha inhlawulo. 10

(5) Nobe ngumuphi umuntfu losebentela hulumente loniketa *sichamuki lesingekho emtsetfweni* tincwadzi kumbe tinsitakalombumbulu kumbe tincwadzi letisho lokungemanga ngesibomu kumbe letingakagunyatwa, kumbe lowenta ngaleny indlela kutsi leso *sichamuki lesingekho emtsetfweni* siphumelele kutifihla kutsi singubani kumbe kutsi siyini *simo sesichamuki eveni* saso, kumbe lotsatsa imali kumbe lokunye langahle anikwe kona langakafaneleki kutsi akutfole kuze ente sento lesitsite kumbe atentele loko lakufunako yena ngaphansi kwalomTsetfo, utakuba nelicala lekwephula umtsetfo lekutakutsi angalahlwa licala abopheleleke kukhokha inhlawulo kumbe kuvalelwa ejele sikhatsi lesingendluli iminyaka lemine, ingce nje kwateka kutsi nangabe lowo muntfu losebentela hulumente acashwe *liTiko* leso sephulomtsetfo sitawujeziswa ngekuvalelwa ejele sikhatsi lesiminyaka lemitsatfu ngaphandle kwekuniketwa litfuba lekukhokha inhlawulo. 15 20 25

(6) Nobe ngubani lowehluleka kutfobela munye walomtfwalo kumbe sinye saletibopho lokwendlalwe ngaphansi kwetigaba 42 kuya ku 46 *talomTsetfo*, utakuba nelicala lekwephula umtsetfo lekutakutsi angalahlwa licala abopheleleke kukhokha inhlawulo kumbe kuvalelwa ejele sikhatsi lesingendluli tinyanga letilishumi nesiphohlongo. 30

(7) Nobe ngubani lohlanganyela ekwakhiweni kweluzungu lwebantfu babili kumbe labangetulu lwekwenta sento lesihlose kwephula *lomTsetfo* ngekuphindzaphindza, utakuba nelicala lekwephula umtsetfo lekutakutsi angalahlwa licala abopheleleke kukhokha inhlawulo kumbe kuvalelwa ejele sikhatsi lesingendluli iminyaka, ingce nje kwateka kutsi nangabe incenye yaleso sento sentiwe kumbe sihlose kwentiwa *kulelinye live*, leso sephulomtsetfo sitawujeziswa ngekuvalelwa ejele sikhatsi lesingendluli iminyaka lemine ngaphandle kwekunikwa litfuba lekukhokha inhlawulo. 35

(8) Nobe ngubani lotsi ngekucinisa inhloko kumbe ngekungawunaki lokubi kakhulu umsebenti wakhe akhiphe sitifiketimbumbulu lesicatjangelwako *kulomTsetfo*, utakuba nelicala lekwephula umtsetfo lekutakutsi angalahlwa licala abopheleleke kukhokha inhlawulo kumbe kuvalelwa ejele sikhatsi lesingendluli umnyaka munye, futsi utawumiswa kuba lilunga lenhlangano yebantfu labafundzele umsebenti lofanana newakhe sikhatsi lesingendluli iminyaka lemibili. 40

(9) Nobe ngubani, lomunye umuntfu lokungesiye losebentela hulumente, lokhipha incwadzi letisho kutsi iyincwadzi lekhishwe kumbe lephetfwe *liTiko*, utakuba nelicala lekwephula umtsetfo lekutakutsi angalahlwa licala abopheleleke kukhokha inhlawulo kumbe kuvalelwa ejele sikhatsi lesingendluli iminyaka lemibili. 45

(10) Nobe ngubani lotakwetsembisa imali kumbe lokunye langahle etsembise kona kumbe ngekwesabisa, acindzetele kumbe ayenge *sisebenti sahumende* kutsi sephule *lomTsetfo* kumbe sephule tibopho taso, utakuba nelicala lekwephula umtsetfo lekutakutsi angalahlwa licala— 50

(a) abopheleleke kukhokha inhlawulo kumbe kuvalelwa ejele sikhatsi lesingendluli tinyanga letilishumi nesiphohlongo; kumbe

(b) nangabe ekugcineni kutawutfolakala kwekutsi empheleni leso *sisebenti sahumende* siwephulile *lomTsetfo* kumbe sitephulile tibopho taso, sitawujeziswa ngekukhokha inhlawulo kumbe kuvalelwa ejele sikhatsi lesingendluli iminyaka lemitsatfu. 55

(11) Nobe ngubani lotfolakele anelicala lekwephula umtsetfo ngalendlela lecatjangelwako esigabeni 37(10) utakutsi angalahlwa licala abopheleleke kukhokha inhlawulo kumbe kuvalelwa ejele sikhatsi lesingendluli tinyanga letisitfupha. 60

(12) *LiKhotso* lingenta selayeta mayelana netindleko lekumele *liTiko* libuyiselwe tona kufika ezingeni lelidingekile kutsi kukhokhwe tindleko lekubhekiswe kuto esigabeni 37(3) letitawubitwa—

- (a) any illegal foreigner referred to in subsection 37(3);
- (b) any person who contravened section 45;
- (c) any person who conveyed into the Republic a foreigner without the required transit visa; or
- (d) any person who committed an offence contemplated in subsections (5), (7), (8) or (10),

which order shall have the effect of a civil judgment of that court.

Administrative offences

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

(2) Anyone who through negligence produces an incorrect certification contemplated by *this Act* shall be liable to an administrative fine of a *prescribed* amount not exceeding R8000, which fine shall be imposed by the *Department*.

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

TRANSITIONAL PROVISIONS

Transitional definitions

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

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

Functions of Department and Board

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

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

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

Existing Permits

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

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

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

- (a) kunobe ngusiphi *sichamuki lesingekho emtsetfweni* lekubhekiswe kuso esigabenincane 37(3);
- (b) kunobe ngubani umuntfu lowephule sigaba 45;
- (c) kunobe ngubani lotfwale waletse *sichamuki eRiphabliki* ngaphandle kwevisa yekwendlula ledzingekile; kumbe
- (d) kunobe ngubani lowente sephulomtsetfo lesicatjangelwako esigabenincane (5), (7), (8) kumbe (10),

leso selayeto lesitakuba nesisindvo lisifana nesesincumo selikhotho letibito (civil judgement) salelo kotho.

Tephulomtsetfo letijeziswa ngenhlawulo

50. (1) Nobe ngusiphi *sichamuki* lesisuka *eRiphabliki* ngemuva kwakuphelelwa sikhatsi kwemvume yaso sitawubopheleleka kutsi sikhokhe inhlawulo yesamba lesimisiwe lengendluli R3 000, leyo nhlawulo letawubitwa *liTiko* nangabe litfole kutsi lesichamuki sendlulelwe sikhatsi sekuhlala nafutsi lekusamba lesitawubitwa *liTiko* ngalesikhatsi lesichamuki singeniswa kumbe senta *sicelo eTikweni*.

(2) Nobe ngubani lotsi ngekungawunaki umsebenti wakhe akhiphe sitifiketi lesingesilo liciniso lesicatjangelwako *kulomTsetfo*, utawubopheleleka kutsi akhokhe inhlawulo yesamba lesimisiwe lengendluli R8 000, leyo nhlawulo letawubitwa *liTiko*.

(3) Nobe ngumuphi *umnikati* kumbe *sikhulu lesiphetse umkhumbi* lotsi ngekungawunaki umsebenti wakhe ephule tibonelelo tesigaba 35 utawubopheleleka kutsi akhokhe inhlawulo yesamba lesimisiwe lengendluli R10 000, leyo nhlawulo letawubitwa *liTiko*.

TIBONELELO TESIKHATSI SENGUCUKO

Kuchazwa kwemagama ngesikhatsi sengucuko

51. Ngetinjongo tetigaba 52 na 53, lokuchazwa kwemagama lokulandzelako lokwengeta kuloku kwakucala kumbe lokwehlukile kunaloku kwakucala kutawusebenta, ngaphandle kwalapho simokusho sidzinga kutsi kubengaleny indlela:

- (i) “-khishiwe” kusho kukhishwa kuGazethi yaHulumende;
- (ii) “-misa” kusho kubonelela ngekwenta *timiso* futsi “-misiwe” usho intfo lehambisana naloko;
- (iii) “*timiso*” kusho kokubili imitsetfo leyetayelekile kanye nalegagulwe yiNdvuna yaphindze yakhishwa; futsi
- (iv) “*umTsetfo waphambilini*” kusho umTfetso wekuPhatfwa kweBantfu beTive, 1991 (umTsetfo No. 96 wa 1991).

Imisebenti yeliTiko kanye neyeBhodi

52. (1) Kuze kufike sikhatsi lapho *iBhodi* seyisungulwe ngalokufanele futsi seyisebenta, nobe ngutiphi *timiso* letidzingakalako ngekumisa *kwalomTsetfo* titawumiswa.

(2) Ngaphansi *kwalomTsetfo*, nobe ngutiphi *timiso* letitsetfwe ngaphansi kwemTsetfo waphambilini titawuhlala tisebenta futsi tinemandla uze loyo *mTsetfo* ucitfwe kumbe uguculwe.

(3) *IBhodi* itawubitwa kungakapheli emalanga langemashumi layimfica *lomTsetfo* ucalisile kusbenta.

Timvume letivele tikhona

53. (1) Nobe nguyiphi imvume yekuhlala somphelane leyakhishwa ngendlela yakhona ngaphansi kwemTsetfo waphambilini kutawutsatfwa kwekutsi yakhishwa ngekumisa *kwalomTsetfo* kanye nangekuhambisana nawo.

(2) Nobe nguyiphi imvume leyakhishwa ngekumisa kwemTsetfo waphambilini kutsi isebente sikhatsi lesincunyiwe itawuchubeka isebente futsi ibe nemandla ngekuhambisana netimeko kanye nemibandzela leyakhishwa ngaphansi kwayo, kepha itawuvuselelwa kabusha kuphela ngaphansi *kwalomTsetfo*, ingce nje nakwateka kutsi—

- (i) *liTiko* lingasibeka eceleni sidzingakalo sekufaka *sicelo* lesisha; futsi
- (ii) nakukhona sizatfu lesihle sekwenta njalo, *liTiko* lingagunyata kutsi imvume ayivuselelwe kabusha ngekumisa kwemTsetfo waphambilini.

(3) Any exemptions for an undetermined period granted in terms of section 28(2) of the previous Act shall be deemed a permanent residence permit for the purposes of *this Act*, and any exemption granted for a determined period shall continue in force and effect in accordance with the terms and conditions under which it was issued.

(4) Permits issued under section 41 of the previous Act shall continue in force and effect in accordance with the terms and conditions under which they were issued, but may not be renewed. 5

Repeal of laws

54. (1) The laws mentioned in Schedule 3 are hereby repealed or amended to the extent set out in its third column. 10

(2) Anything done under the provisions of a law repealed by subsection (1) and which could have been done under *this Act* shall be deemed to have been done under *this Act*.

Short title and commencement

55. (1) This Act shall be referred to as the Immigration Act, 2002, and shall come into force and effect on a date determined by the *President* by proclamation in the 15 *Government Gazette*.

(2) The date of coming into force and effect of section 37 shall be determined in consultation with the *Minister* for Justice and Constitutional Development.

(3) Nobe ngukuphi kucolelwa sikhatsi lesingakashiwo lokwentiwe ngekumisa kwesigaba 28(2) *semTsetfo waphambilini* kutawutsatfwa kwekutsi kuyimvume yekuhlala somphelane ngetinjongo *talomTsetfo*, futsi nobe ngukuphi kucolelwa lokwentelwe sikhatsi lesitsite kutawuchubeka kusebente futsi kube nemandla ngekuhambisana netimeko kanye nemibandzela lokwakhishwa ngaphansi kwako. 5

(4) Timvume litikhishwe ngaphansi kwesigaba 41 *wemTsetfo waphambilini* titawuchubeka tisebente futsi tibe nemandla ngekuhambisana netimeko kanye nemibandzela letakhishwa ngaphansi kwako, kepha atinakuvuselelwa kabusha.

Kucitfwa kwemitsetfo

54. (1) Ngaloku imitsetfo lephawulwe kuShejuli 3 iyacitfwa kumbe iyaguculwa kuze 10 kufike ezingeni lelendlalwe kukholomu yesitsatfu.

(2) Nobe yini leyentiwa ngaphansi kwetibonelelo temtsetfo locitfwe ngaphansi kwesigabancane (1) nafutsi lebeyingentiwa ngaphansi kwalomTsetfo kutawutsatfwa kwekutsi yentiwe ngaphansi kwalomTsetfo.

Libito lelifinyetiwe kanye nekucala kusebenta

15

55. (1) *LomTsetfo* lona utawubitwa ngekutsi ngumTsetfo wetiFikinamtfwalo, 2002, futsi utawucala kusebenta kanye nekuba nemandla ngelusuku lolutawuncunywa nguMengameli ngesimemetelo kuGazethi yaHulemende.

(2) Lusukulwekucala kusebenta kanye nekuba nemandla kwesigabancane 37 lutawuncunywa ngekubonisana neNdvuna yetemTsetfo nekuTfutfukiswa 20 kwetemTsetfosisekelo.

Schedule 1**Offences referred to in section 28(a) and (b) of *this Act***

Treason against the *Republic*
Murder
Rape, other than statutory rape
Indecent Assault
Robbery
Kidnapping
Assault when a dangerous wound is inflicted
Arson
Any conspiracy, incitement or attempt to commit an offence referred to in this
Schedule

IShejuli 1**Tephulomtsetfo lekubhekiswe kuto esigabeni 28(a) na (b) salomTsetfo**

Kumbukela *iRiphabliki*

Kubulala

Kudlwengula, lokunye lokungesiko kudlwengula umntfwana losemncane

Kulimata ngekunukubeta

Kuphanga

Kutfumba

Kuba umntfwana

Kulimata umuntu abe nesilondza lesibi

Kutfungela ngemlilo

Nobe ngukuphi kubopha luzungu, kubhebbhetela kumbe kuzama kwephula umtsetfo
lekubhekiswe kuko kuleShejuli

Schedule 2**Offences referred to in section 28(b) of this Act**

Corruption
Sedition
Public violence
Culpable Homicide
Bestiality
Malicious injury to property
Breaking and entering any *premises*
Theft
Receiving stolen property knowing it to have been stolen
Fraud
Forgery or uttering a forged document knowing it to have been forged
Offences relating to coinage
Any offence relating to the illicit possession, conveyance or supply of dependence-producing drugs
Any conspiracy, incitement or attempt to commit an offence referred to in this Schedule
Any offence the punishment of which may be a period of imprisonment exceeding six months without the option of a fine

IShejuli 2**Tephulomtsetfo lekubhekiswe kuto esigabeni 28(b) salomTsetfo**

Kukhohlakala
Kuvukela umbuso
Ludlame emphakatsini
Kubulala ungakahlosi
Kulalana nesilwane
Kulimata imphahla ngelunya
Kugcekeza kanye nekungena emabaleneni
Kweba
Kwemukela imphahla leyebiwe wati kutsi yebiwe
Kukhwabanisa
Kwenta emaphephambumbulu kumbe kusabalalisa emaphepha ube wati kutsi
ngemaphephambumbulu
Tephulomtsetfo letiphatselene nemali
Nobe ngusiphi sephulomtsetfo lesiphatselene nekuba netidzakamivo letigcilatanako
letitfolakele ngebugebengu, kutitfwala kumbe kutisabalalisa kulabanye
Nobe ngukhuphi kubopha luzungu, kubhebbhetela kumbe kuzama kwephula umtsetfo
lekubhekiswe kuko kuleShejuli
Nobe ngusiphi sephulomtsetfo leso kujeziswa kwaso kungaba kuvalelwa ejele
sikhatsi lesingetulu kwetinyanga letisitfupha ngaphandle kwekunikwa litfuba
lekukhokha inhlawulo

Schedule 3

Laws repealed or amended

No and year of law	Short Title	Extent of the repeal or amendment
Act No. 96 of 1991	Aliens Control Act, 1991	The whole repealed
Act No. 75 of 1995	Aliens Control Amendment Act, 1995	The whole repealed
Act No. 88 of 1995	South African Citizenship Act, 1995	1. Amendment of section 1 Section 1 of the South African Citizenship Act, 1995 (hereinafter referred to as "<i>the principal Act</i>") is hereby amended by the addition of the following definition: - "<i>prescribed</i>", as used in section 5 of <i>this Act</i>, has the meaning assigned thereto in the Immigration Act of 2002;" 2. Amendment of section 26 The following subsection is hereby added to the end of section 26 of <i>the principal Act</i>: “(5) In case of an inconsistency between this Act and the Immigration Act of 2002, the latter shall prevail.” 3. Implementation The amendments to <i>the principal Act</i> shall come into force and effect at a date <i>prescribed</i> by the <i>Minister</i>, provided that the <i>Minister</i> may determine different dates for different provisions thereof.

IShejuli 3

Imitsetfo lecitsiwe kumbe leguculiwe

IIno yemtsetfo nemyaka wawo	Libito lelifinyetiwe	Lizinga umtsetfo locitfwe kumbe loguculwe ngalo
UmTsetfo No. 96 wa 1991	UmTsetfo wekuPhatfwa kweBantfu beTive	Wonkhe ucitsiwe
UmTsetfo No. 75 wa 1995	UmTsetfo wekuGucula, wekuPhatfwa kweBantfu beTive	Wonkhe ucitsiwe
UmTsetfo No. 88 wa 1995	UmTsetfo weKuba Sakhamuti saseNingizimu Afrka	1. Kuguculwa kwesigaba 1 Sigaba 1 semTsetfo weKuba Sakhamuti saseNingizimu Afrika, 1995 (emvakwaloku lotawubitwa ngekutsi “<i>die hoofwet</i>”) siyaguculwa ngekwengeta lokuchazwa kwemagama lokulandzelako: — “‘voorgeskrif’, soos gebruik in artikel 5 van hierdie Wet, het die betekenis wat daaraan toegeskryf word in die Immigrasiewet van 2002.”. 2. Kuguculwa kwesigaba 26 Lesigabancane lesilandzelako siyengetwa lapho kuphela khona sigaba 26 semTsetfo wakucala: “(5) In die geval van ’n teenstrydigheid tussen hierdie Wet en die Immigrasiewet van 2002, sal laasgenoemde van toepassing wees.”. 3. Kusetjentiswa kwemtsetfo Tingucuko letentiwe kumTsetfo wakucala titawucala kusebenta futsi tibe nemadla ngelusuku lolutawumiswa yiNdvuna, ingce nje nangabe iNdvuna itawuncuma tinsuku letehlukene itincumele tibonelelo letehlukene.

No and year of law	Short Title	Extent of the repeal or amendment
Act No. 130 of 1998	Refugees Act, 1998	1. Amendment of section 1 Section 1 of the Refugees Act, 1998 (hereinafter referred to as "<i>the principal Act</i>"), is hereby amended by— (a) the addition or substitution of the following definitions: - "<i>Board</i>" has the meaning assigned thereto in the Immigration Act of 2002 - "<i>Court</i>" has the meaning assigned thereto in the Immigration Act of 2002 - "<i>prescribed</i>" has the meaning assigned thereto in the Immigration Act of 2002; (b) the deletion of the following definitions: - "<i>Aliens Control Act</i>"; - "<i>Appeal Board</i>". 2. Amendments to principal Act (1) <i>The principal Act</i> is hereby amended by substituting— (a) the word "<i>Minister</i>" with the words "<i>Minister, acting after consultation with the Board</i>", where such word occurs in sections 7[1] and 10; (b) the word "<i>Minister</i>" with the word "<i>Department</i>" where such word occurs in sections 22 and 23; (2) <i>The principal Act</i> is hereby amended by deleting—

Ino yemtsetfo nemyaka wawo	Libito lelifinyetiwe	Lizinga umtsetfo locitfwe kumbe loguculwe ngalo
UmTsetfo No. 130 wa 1998	UmTsetfo webaBaleki, 1998	1. Kuguculwa kwesigaba 1 Sigaba 1 semTsetfo webaBaleki, 1998 (emvakwaloku lotawubitwa ngekutsi “<i>die Hoofwet</i>” uguculwa— (a) ngekwengeta kumbe kufaka endzaweni yalokunye lokuchazwa kwemagama lokulandzelako: — “<i>Raad</i>” het die betekenis daaraan toegeskryf in die <u>Immigrasiewet van 2002</u>; — “<i>Hof</i>” het die betekenis daaraan toegeskryf in die <u>Immigrasiewet van 2002</u>; — “<i>-voorgeskryf</i>” het die betekenis daaraan toegeskryf in die <u>Immigrasiewet van 2002</u>.”; (b) ngekususa kwalokuchazwa kwemagama lokulandzelako: — “Wet op Vreemdelinge-beheer”; — “<i>Appelraad</i>”. 2. Kuguculwa kwemTsetfo wakucala (1) <i>UmTsetfo wakucala</i> uyaguculwa ngekufaka endzaweni— (a) yeligama lelitsi “<i>Minister</i>” emagama latsi “<i>Minister</i>,” na oorlegpleging met die <i>Raad</i>,” laplo lelo gama livela khona etigabeni 7 (1) na 10; (b) yeligama lelitsi “<i>Minister</i>” ligama lelitsi “<i>Departement</i>” laplo lelo gama livela khona etigabeni 22 na 23. (2) <i>UmTsetfo wakucala</i> uyaguculwa ngekususa—

Act No. 13, 2002

IMMIGRATION ACT, 2002

No and year of law	Short Title	Extent of the repeal or amendment
		(a) the words “and Appeal Board” and the word “both” where they occur in sections 15, 16, 19 and 20; and (b) the words “or Appeal Board” where they occur in sections 17 and 18. (3) <i>The principal Act</i> is hereby amended by deleting sections 12, 13 and 14 and by substituting section 26 with the following section: “Appeals 26. [(1) Any asylum seeker may lodge an appeal with the Appeal Board in the manner and within the period provided for in the rules if the Refugee Status Determination Officer has rejected the application in terms of section 24(3)(c). (2) The Appeal Board may after hearing an appeal confirm, set aside or substitute any decision taken by a Refugees Status Determination Officer in terms of section 24(3)(c). (3) Before reaching a decision, the Appeal Board may—] <u>An Asylum seeker may lodge an appeal with a Court in the manner and within the period provided for in the rules, and such Court shall hear and determine any relevant question of law or fact in terms of this Act provided that, before reaching a decision, such court may—</u>

INo yemtsetfo nemyaka wawo	Libito lelifinyetiwe	Lizinga umtsetfo locitfwe kumbe loguculwe ngalo
		(a) emagama latsi “sowel” kanye na- “as die Appèlraad” lapho avela khona esigabeni 15, 16, emagama latsi “en Appèlraad” lapho avela khona esigabeni 19, kanye nemagama latsi “en die Appèlraad” lapho avela khona esigabeni 20; kanye (b) nemagama latsi “of Appèlraad” lapho avela khona etigabeni 17 na 18. (3) <i>UmTsetfo wakucala</i> uyaguculwa ngekususa tigaba 12, 13 na 14 kanye nangekufaka endzaweni yesigaba 26 lesigaba lesilandzelako: “Appèlle 26. [(1) Enige asielversoeker kan 'n appèl by die Appèlraad op die wyse en binne die tydperk voorgeskryf deur die reëls aanteken, indien die Vlughtelingstatus-bepalingsbeampte die aansoek ingevolge artikel 24(3)(c) afgekeur het. (2) Die Appèlraad kan, nadat hy 'n appèl aangehoor het, enige besluit deur 'n Vlughtelingstatusbepalings-beampte ingevolge artikel 24(3) bekragtig, tersyde stel of vervang. (3) Die Appèlraad kan, alvorens hy tot 'n beslissing kom—] 'n Asielversoeker kan 'n appèl by die Hof op die wyse en binne die tydperk voorgeskryf deur die reëls aanteken, en dergelike Hof sal die versoek aanhoor en enige tersaaklike regspraak of feit betreffende hierdie Wet vasstel, met dien verstande dat alvorens 'n beslissing gemaak word, mag dergelike Hof—

Act No. 13, 2002

IMMIGRATION ACT, 2002

No and year of law	Short Title	Extent of the repeal or amendment
		(a) invite the UNHCR representative to make oral or written representations; (b) refer the matter back to the Standing Committee for further inquiry and investigation; (c) request the attendance of any person who, in its opinion, is in a position to provide the [Appeal Board] Court with relevant information; (d) of its own accord make further inquiry or investigation; (e) request the applicant to appear before it and to provide any such other information as it may deem necessary. [(4) The Appeal Board must allow legal representation upon the request of the applicant.]” 3. Implementation The amendments to <i>the principal Act</i> shall come into force and effect at a date <i>prescribed</i> by the <i>Minister</i>, provided that the <i>Minister</i> may determine different dates for different provisions thereof ensuring that the relevant provisions come into force only after the <i>Courts</i> have been partially or fully established.

INo yemtsetfo nemyaka wawo	Libito lelifinyetiwe	Lizinga umtsetfo locitfwe kumbe loguculwe ngalo
		(a) die verteenwoordiger van die VNHKV uitnoui om [’n] mondelinge of skriftelike voorleggings te doen; (b) die aangeleentheid na die Staande Komitee vir verdere navraag en ondersoek terugverwys, (c) die teenwoordigheid van enige persoon versoek wat na die [Appèlraad] Hof se mening in staat is om [die Appèlraad] dit van tersaaklike inligting te voorsien; (d) uit eie beweging verdere navraag doen of ondersoek instel; (e) die applikant versoek om voor die [Appèlraad] Hof te verskyn en enige ander inligting wat [die Appèlraad] dit nodig ag, te verstrek. [(4) Die Appèlraad moet op versoek van die applikant regsvertegenwoordiging toelaat.]” 3. Kusetjentiswa kwemtsetfo Tinguculo letentiwe <i>kumTsetfo wakucala</i> titawucalisa kusebenta kanye nekuba nemandla ngelusuku lolumiswe yiNdvuna, ingce nje nangabe iNdvuna itawubeka tinsuku letingafanani itibekela tibonelelo letingafanani talomTsetfo.