



## IMMIGRATION LAWS SOUTH AFRICA

*(Immigration Act No 13 of 2002, as amended by Act No 19 of 2004; Immigration Regulations of 27 June 2005)*

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## I. Introduction

For many years, South Africa has been a popular destination for holiday makers, students, work seekers and business owners, investors and retirees. Few of the foreigners coming to South Africa remain untouched by the diversity and beauty of the country and its people, and many decide to prolong their stay or settle here altogether.

For many foreigners, however, obtaining the relevant residence permit poses a great challenge. As applicable laws, regulations and practice are complex and success is vital for the foreigner's future life, seeking professional assistance is advisable.

In choosing the permit category and the application procedure and in preparing the application, there are numerous pitfalls which can cause enormous delays and may jeopardise the application. Once an application has been rejected, obtaining a permit is a time-consuming exercise and may be impossible. Further, Departmental officials' interpretation and application of the laws still lack transparency and consistency, which may lead to misunderstanding and frustration on the side of the applicant. With the help of a professional advisor, however, a foreigner's immigration can be a pleasant and stress-free process.

The following is a summary of the most important elements of South African immigration laws. It is not comprehensive and does not replace an individual consultation.

The various permit categories are listed according to the applicant's grounds for the intended stay and the applicant's intended activity in South Africa. In each category, the possibilities of obtaining temporary as well as permanent residence are laid out.

## **II. Change in Legislation 1 July 2005**

### **1. Legislative Process and Background**

The recent change in legislation is the current Minister of Home Affairs' (Nosiviwe Mapisa-Nqakula of the *African National Congress – ANC*) reaction to the immigration regime which had been introduced by the former Minister of Home Affairs Dr. Mangosuthu Buthelezi (*Inkatha Freedom Party – IFP*) and which had brought about revolutionary changes.

Buthelezi and his advisors had introduced, amidst much controversy, an immigration regime which attempted to keep up with global trends and to attract investment into the country. It was meant to make immigration for bona fide applicants easier in order to free resources for combatting illegal immigration, corruption and fraud.

The Immigration Act (Act No. 13 of 2002) and Regulations were widely criticised, especially for the lack of consultation of the relevant bodies and organs during its drafting.

### **2. Intention and Approach of the Legislator**

As publicised in the media and confirmed in personal conversations, the recent amendments to the Immigration Act and Regulations were intended to correct legal errors, to close gaps, to make the application of the laws simpler and to improve the conditions for investors to South Africa. As is the case in all areas of South African politics, the situation of South Africa's immediate neighbours and of the entire African continent is taken into special consideration. Although South Africa's dire need for direct foreign investment is acknowledged, the government is increasingly differentiating between various types of investment and puts more and more value on a particular investment or foreigner's contribution to the country's sustainable growth and to employment creation.

It is apparent that one of the Minister's prime intentions was not to make the same mistake as her predecessor and to ensure that a comprehensive consultation took place and relevant government as well as non-government organs were given an opportunity to comment on the matter. Especially during the regulation-making, a consultative process was followed which included the public, the *Immigration Advisory Board* (which reports to the Minister), relevant Ministries and even Parliament. This way, the widest possible consensus was meant to be found for this complex piece of legislation which inherently touches a number of different interests and typically causes controversy.

### 3. Evaluation

The new legislation brings about some positive changes and clarifications and makes the immigration laws more user-friendly. Some requirements for work permits have been abolished (on the other hand, new ones were introduced and exemptions were removed) and the financial requirements for retirees have been structured more logically. However, the law also contains some elements which will be to the disadvantage of applicants and, in our opinion, also work against the country's goals of attracting foreign investment and promoting sustainable growth.

When reading the Amendment Act and new Regulations, it is evident that a variety of different interests and wishes were considered and heard. Unfortunately, in spite of the wide consultation followed by the Department, some vital organisations, which could have provided insight into the practical problems caused by some of the regulations, were omitted in this process. Warnings from the side of the *Immigration Advisory Board*, experts and the public regarding those practical problems and effects thereof, were largely ignored and the stance was taken that practical problems outside the Department of Home Affairs could not be considered and would have to be addressed by the respective authority or organization experiencing those problems.

In effect, changes implemented after much debate and with enormous effort in 2003, have partly been reversed and in many ways the status quo of the previous system has been restored. In some areas (for instance, in the case of the business permits), the requirements are now even stricter than before 2003. The Department has been given back much of the discretion that had purposefully been transferred to other experts in 2003, the review and appeal procedures have been significantly shortened and the express obligation for the Department to endeavour to process all applications within 30 days from submission was abolished again. The creation of an independent body regulating the profession of immigration practitioners (similar to a law society), thereby outsourcing and centralizing this task, was largely reversed. Long-term visits to South Africa are now only possible in specific and narrowly defined cases.

The legislative changes unfortunately lack a clear direction and vision, and it appears that the importance of immigration law in all its details for South Africa's development and growth is being underestimated. Instead of attracting investors, the changes have caused confusion and bewilderment and have therefore failed to meet one of the Minister's prime goals.

### **III. Permits According to Grounds for Stay / Intended Activity**

#### **1. Visit, Holiday**

##### **1.1. Stay of up to 3 Months**

A foreigner, who wishes to stay in South Africa for a period of up to 3 months without following an activity which requires authorisation, can obtain a *visitor's permit* fairly easily. Citizens of those countries which are visa exempt (e.g. UK, USA, Australia and most European countries) will be issued with this permit upon entry to South Africa.

The following is required:

- 1.1.1. proof of sufficient funds to sustain applicant during stay (whereby the term “sufficient” has not been defined),  
or  
undertaking by South African host to cover necessary expenses;
- 1.1.2. presentation of valid return air ticket covering the intended period of stay,  
or  
payment of a deposit to the value of such ticket.

Only **ONE** extension of the 3-month *visitor’s permit* for an additional 3 months may be granted under the above conditions. Until recently, the number of extensions was not limited.

## **1.2. Stay for a Period of 3 to 36 Months**

As of 1 July 2005, *extended visitor’s permits* (valid for up to 3 years) are granted only in narrowly defined cases (please refer to „Voluntary or Charitable Activity“ and „Education, Studies, Internship, Articles, Academic Sabbatical, Research“ below). A mere long-term stay without any specific purpose other than leisure or holiday and without any family relationship to a holder of certain permits (refer to „Permits for Accompanying Family of Applicants“ below) is not provided for anymore.

## **1.3. Permanent Residence**

For most activities referred to in chapter 1 there is no option of obtaining a *permanent residence permit*. Solely spouses/life partners and dependent children of applicants for permanent residence in most categories are included in the main applicant’s application (please refer to chapter IV.4. below).

## **2. Family Relation to South African Citizen or Permanent Resident**

### **2.1. Spouses/Life Partners**

Spouses and life partners of South African citizens or permanent residents who do not qualify for study, work or business permits in their own right can be permitted to study, work or conduct a business purely on the grounds of their spousal relationship and without having to meet any further criteria.

The term “life partner” includes heterosexual and homosexual partnerships between a foreigner and a South African citizen or resident independently of the country in which the partnership has been concluded. As proof for such partnership an affidavit and further documentary proof is to be furnished. The requirement of a so-called “notarial contract” was abolished with the latest amendments to the legislation.

### **2.2. Immediate Family**

Members of a South African citizen or permanent resident’s immediate family can obtain a *relative’s permit*. The term “immediate family” is defined to include “members within the second step of kinship, whereby a spousal relationship is counted as one of such steps, but any other common antecedent is not so counted”. The relative’s permit allows its holder to stay in South Africa and does not include the right to work, to study or to conduct a business. It is issued for a period of 2 years.

### **2.3. Permanent Residence**

In terms of the recent amendments to the immigration laws spouses/life partners of South African citizens or permanent residents qualify for permanent residence on the grounds of such spousal relationship only if and when their spousal relationship has subsisted for at least 5 years. Life partners need to submit proof of their relationship still being intact after 2 years of permanent residence having been issued to the foreign partner.

Family members of South African citizens of permanent residents within the first step of kinship also have a right to permanent residence. It needs to be noted that minor children of permanent residents are required to confirm their status within 2 years after having reached the age of 21.

### **3. Previous Citizenship or Permanent Residence**

#### **3.1. Previous Citizenship**

In specific cases, former South African citizens have an automatic right to permanent residence.

There are many cases where the original South African citizenship is still intact in spite of the holder having taken up the citizenship of another country. Where a citizenship by birth, however, has been lost the former holder thereof often has an automatic right to permanent residence, which right needs to be officially confirmed. The situation is similar in the cases of former holders of Namibian (i.e. South West African) AND South African citizenship and whose South African citizenship was withdrawn due to political changes.

#### **3.2. Previous Permanent Residence**

Persons who have been granted a permanent residence at some point in time and who have given up their residence in South Africa, but wish to take it up again will find it worth their while to have the validity of their original permits tested. Since the information to be given and the statements to be made in the relevant *application for confirmation of permanent residence* are often from the applicant's memory only, but vital in determining the application result, a consultation with an immigration expert is particularly advisable.

#### 4. Voluntary or Charitable Activity

Persons wishing to take up charitable or voluntary activities in South Africa can obtain an *extended visitor's permit* for a period of up to 3 years. It is within the nature and general definition of such activities that they may not be remunerated.

The following requirements apply:

- 4.1. proof of sufficient funds to sustain applicant during stay (whereby the term "sufficient" has not been defined),  
or
- 4.2. undertaking by the charitable organisation to cover necessary expenses.

There is no possibility to obtain ***permanent residence*** on the grounds of the activities referred to in chapter 4.

#### 5. Education, Studies, Internship, Articles, Academic Sabbatical, Research

##### 5.1. Study Permit

Persons wishing to attend school, university or other institutions of learning in South Africa can obtain a *study permit*. The applicant needs to furnish a letter by the educational institution confirming the applicant's provisional acceptance and the minimum period of the studies or course. Holders of a study permit for higher education may take up part-time work of up to 20 hours per week.

As of 1 July 2005 all applicants for a study permit need to furnish proof of medical cover by a provider which is registered or recognized in South Africa. Applicants younger than 21 years need to have a local guardian authorized by the applicant's holders of custodial rights.

## 5.2. Vocational Training, Internship, Articles, Practical Year

Finding the correct permit category in South African immigration laws for practical work which is part of training or studies has been problematic and hotly debated for years. In the past, a *visitor's*, *study* or *work* permit was issued according to the respective office's or official's interpretation of the law. What makes things worse is that in terms of the amended legislation, the term "work" is defined to include any activity consistent with running a business, or consistent with being employed or with the profession of the person, with or without reward. Further, work or studies for a period of less than 3 months are not covered by the *visitor's permit* anymore, as was the case until recently, and now require a *study* or *work permit*.

A possible interpretation will now be that activities conducted as part of a course or training in South Africa or abroad will call for a study permit, and that those outside an official course or training will call for a work permit. In the former case, a confirmation by the educational institution will in all likelihood be necessary. For applicants under the age of 25 the possibility of an *exchange permit* exists, which is valid for 1 year and precludes the holder from obtaining any other temporary residence permit for a period of 2 years after its expiry.

Further, the amended laws on visitor's permits contain a rather vague clause whereby the holder of a *visitor's permit* may be permitted to conduct work under certain circumstances which have not been defined or prescribed. Short-term work, internships or articles may in the future be categorised under this clause and permitted on a visitor's permit with the relevant permission by the Director-General.

Depending on the permit category which may apply in the various cases referred to above, the requirements for each category will apply.

### **5.3. Academic Sabbatical, Research**

Persons who wish to spend an academic sabbatical or conduct research in South Africa (without being registered with or working for a local academic body, in which case a *study* or *work permit* would have to be obtained) may obtain an *extended visitor's permit* valid for a period of up to 3 years.

The following requirements apply:

- 5.3.1. Proof of sufficient funds to cover costs of the intended stay (whereby the term “sufficient” has not been defined),  
or
- 5.3.2. Undertaking by the local organisation or host to cover living expenses;
- 5.3.3. Explanation of and proof for intended activity (this is not an express requirement, but it is expected that this will be necessary).

The term “academic sabbatical” is not defined in the immigration laws and is generally defined as time taken off for learning or research. Administrative practice will show what type of learning or research is covered by this type of permit and in what way it needs to be proven.

### **5.4. Permanent Residence**

On the grounds of the activities referred to in chapter 5. there is no possibility of obtaining permanent residence.

## **6. Work in Employment**

Persons wishing to seek or take up employment in South Africa need to obtain a *work permit*. There is a choice of various categories of work permits, which is to be made

according to the type and duration of the post as well as to the applicant's qualifications and/or experience.

As is the case in almost all categories (refer to "General" below), an applicant for a *work permit* needs to provide a valid air return ticket covering the period of the intended stay or a deposit to the value of such ticket. In the case of *work permits*, however, the deposit can in some instances be replaced by a written undertaking of the applicant's prospective employer to cover the costs of the applicant's repatriation to his/her country of usual residence if the need arises.

### **6.1. General Work Permit**

The work permit as it was known even before April 2003 is the so-called *general work permit*. Here, the prospective employer needs to motivate his need for the foreign applicant's specific qualifications, skills or experience and to submit proof of his efforts to recruit a local candidate (amongst other things, by way of an advertisement of the position).

Since the recent amendments to the immigration laws, no-one is exempted from the requirement to advertise the position anymore. Up until the implementation of those changes, persons such as key personnel on management level, qualified chefs, medical doctors and practitioners, as well as experts in the film industry on a seasonal basis were exempted.

As of 1 July 2005, the applicant's qualifications need to be evaluated by the South African evaluation authorities, which is a time-consuming and costly exercise due to the large number of applications received by this authority.

### **6.2. Quota Work Permit**

The so-called quota work permit is issued to a prescribed number of foreigners who possess certain academic degrees and/or a certain number of years of professional

experience. Individuals with a vocational or academic degree and (preferably relevant) work experience of at least 2 years generally qualify for this type of permit. Here, the employer does not need to motivate and prove that the position cannot be filled with a South African citizen or permanent resident.

With the recent amendments to the immigration laws the “training fee” of 2% of the applicant’s taxable remuneration which was previously to be paid to the authorities has been abolished. Further, no more opinion by the Department of Labour needs to be obtained.

Of particular interest is the fact that a quota work permit can now be issued even if no job offer or contract can be shown by the applicant. Such a contract is to be submitted to the Department within 90 days of issuing of the permit. This way what was formerly known as *work seekers permit* has been re-introduced.

As is the case in the *general work permit* category, here, too, the applicant’s qualifications need to be evaluated by the South African evaluation authorities which is costly and time-consuming.

### **6.3. Exceptional Skills**

Persons with exceptional skills or qualifications can be granted an exceptional skills work permit purely on the grounds of those skills or qualifications and independently of a particular job offer or position to be taken. The term “exceptional” is not defined. However, the skills need to be confirmed by a South African or foreign organ of state, or an established South African academic, cultural or business body and proven by further documentation.

The *exceptional skills work permit* is valid for up to 3 years and may be extended.

#### **6.4. Secondment**

In the case of secondments or transfers of employees between branches, related or affiliated companies, a so-called intra-company transfer permit may be obtained. The administrative effort and requirements for this type of permit are less than in the other worker categories, but the permit is restricted to a period of 2 years and cannot be extended.

#### **6.5. Work for a Foreign Employer and Remunerated Abroad**

Foreigners who are employed by a company outside of South Africa and who are remunerated abroad, but who conduct part of their activities within South Africa with no affiliation to a South African firm, previously qualified for an *extended visitor's permit*. The relevant clause has recently been abolished and thus administrative practice will have to show whether or not, and if so, with which type of permit such persons may reside in South Africa for more than 3 months.

#### **6.6. Permanent Residence**

*Permanent residence on grounds of permanent employment* or of *exceptional skills* may be issued to workers in the categories mentioned under paragraphs 6.1. and 6.3., whereby almost identical requirements apply as in the respective temporary category. Further, foreigners who have held a work permit in terms of the Immigration Act of 2003, as amended, qualify for *permanent residence*. Barring those with exceptional skills, applicants for permanent residence in this category need to be in possession of a permanent employment offer.

## 7. Companies with an Ongoing Need for Foreign Employees

Companies with a proven ongoing need for foreign employees can obtain a so-called *corporate permit*. This permit is issued not to the individual worker, but to the employer and allows it to employ a specific number of foreigners in specific positions on an ongoing basis.

The corporate applicant needs to motivate and prove its need for foreign staff. As is the case in the quota work permit category, the “training fee” of 2%, payable to the Department of Home Affairs, has been abolished. When issued with a corporate permit, the corporation can recruit foreigners who will be issued with *corporate worker permits* on submission of their personal documentation in a much simplified procedure. The *corporate permit* allows corporations a more flexible and predictable staff planning.

## 8. Own Business, Entrepreneurship

The so-called business permit is issued to foreigners who wish to establish a new business in South Africa, or to invest in or take over an existing business. Wide protest from the public, from European business organisations, from experts and from the *Immigration Advisory Board* after the publication of draft Regulations in January 2005 prevented the introduction of extremely onerous requirements for the business permit,. However, some illogical, unnecessary or inappropriate criteria were upheld in the amended laws which were eventually implemented.

## 8.1. Requirements

The following requirements need to be met as of 1 July 2005:

### 8.1.1. Minimum Investment

Certification by a chartered accountant confirming that

- Cash to the value of R 2,5 million,
- A capital contribution to the value of R 2,5 million, or
- Cash to the value of R 2 million as well as a capital contribution to the value of R 0,5 million,

originating from abroad, are available to be invested into the book value of the business.

The above minimum investment can, however, be reduced or waived if so requested by the Department of Trade and Industry, or when the business is within an industry which has been declared by the Minister to be in the national interest. Currently these industries are:

- Information and Communication technology;
- Clothing and textile manufacturing;
- Chemicals and bio-technology;
- Agro-processing;
- Metals and mineral refinement;
- Automotive manufacturing;
- Tourism;
- Crafts.

### 8.1.2. Business Plan

A comprehensive business plan needs to lay out the short and long-term viability of the business.

### 8.1.3. Employment of South African Citizens or Permanent Residents

Each applicant is to undertake to permanently employ at least 5 South African citizens or permanent residents.

## 8.2. Validity and Extension

Two years after being granted a business permit the holder is to submit to the Department proof that the above-listed requirements have been met, and every 2 years thereafter proof that the requirements are still being met.

## 8.3. Permanent Residence

A *permanent residence permit on grounds of establishing or investing in a business* may be obtained when meeting the requirements as laid out above. Here, proof of the requirements being met is to be submitted 2 years after issuing of the permit, and again 3 years thereafter.

## 9. Financial Independence, Retirement, Pension

### 9.1. Retirees/ Pensioners

The *retired person permit* is issued to foreigners of all ages who are able to submit proof of sufficient financial means available to them for their retirement in South Africa. The holders of this permit may reside in South Africa on a seasonal or continuous basis.

With the recent amendments to the immigration laws the requirements for a *retired person permit* have been made more logical, but in some cases also more restrictive.

Proof of the following is to be submitted:

9.1.1. A life-long monthly income from abroad of R 20 000 from a pension, an irrevocable annuity or retirement account; or

9.1.2. „Combined assets“ (no minimum value) realising a monthly income of R 20 000.

The above-listed requirements apply per person. This, in effect, means that the income or net assets of spouses or life partners are considered separately and each partner needs to qualify for the permit in his/her own right.

The holder of a *retired person permit* may be permitted to work. The criteria for such a permission have not been prescribed.

The *retired person permit* can be issued for a period of up to 4 years and is renewable for a further period of 4 years at a time.

## **9.2. Financial Independence**

As laid out in paragraph 1.2. above, financial independents who wish to stay in South Africa for more than 3 months without following an activity which requires an authorisation, cannot simply obtain an *extended visitor's permit* anymore.

In most cases these financial independents choose to apply for a retired person permit even when they are far from having reached retirement age.

They further have the option of applying for a business permit (provided they meet the relevant criteria) which gives them the right, but not the obligation to work in the business.

## **9.3. Permanent Residence**

Financial independents can obtain a *permanent residence permit* based on *establishing or investing in a business* or on *retirement*, whereby the same criteria as laid out above apply.

Alternatively, a *permanent residence permit based on financial independence* can be obtained, provided the applicant can submit proof of a net value of R 7,5 million and is willing to pay a fee of R 75 000 to the Department upon granting of the permit. (The amounts were previously R 20 million and R 100 000, respectively. After widespread protest they were – insignificantly – lowered. Due to the exaggerated fee and the more accessible alternative of the *retired person permit* this permit category will remain obsolete.)

## **IV. General**

### **1. Deposit**

In terms of the recent amendments to the immigration laws, all of the above-listed applications for temporary residence are to be accompanied by a deposit to the value of a return air ticket to the applicant's country of origin or usual residence. As indicated for some categories above, the deposit can in some categories be replaced by showing the actual return air ticket covering the period of the intended stay or, in the case of a *work permit*, by the prospective employer's written undertaking to cover any costs incurred for the applicant's repatriation to his/her country of origin.

### **2. Place of Submission**

Generally, an application may be submitted at the South African mission in the applicant's country of origin or permanent residence. Depending on the respective mission's authority,

the application can be processed and finalised there, or it needs to be referred to the Department's Head Office in Pretoria, South Africa.

Alternatively, a foreigner who is already in South Africa can submit to the nearest office of the Department an application for extension of his/her permit or for a change of status, for instance from the status of visitor to that of worker, student, retiree or business owner.

In the past, the question of whether or not foreigners could enter the country as visitors even if they had the intention of applying for a different kind of permit from within the country, was hotly debated. The clause which previously expressly allowed for such procedure has been abolished with the latest legal changes. The current legislation does not contain any restrictions with regards to the possibility of changing status from within the country. However, the impression that entry to South Africa was obtained on the basis of untrue statements should be avoided.

### **3. Extensions**

Almost all temporary permits can be extended from within South Africa. The *intra-company transfer permit* and the *exchange permit* (which has not been discussed above), for instance, are not extendable. It is to be noted that all applications for extension or for change of status are to be submitted at least 30 days before the expiry of the current permit. Applicants submitting their applications after such date were previously charged with an additional fee. In terms of the current legislation, the application can even be rejected if good cause for the late submission cannot be sufficiently shown. Rather obscurely, this also applies if the original permit is only valid for 30 days and a timeous submission is therefore impossible.

## 4. Permits for Accompanying Family of Applicants

The rights and status of an applicant's family (which includes spouses/life partners and dependent children) differ according to the main applicant's permit category. In some categories, the family is automatically included in the main applicant's permit, in others the family has a right to a *visitor's permit for the purpose of accompanying the main applicant*, and in further categories the family members are seen as independent and need to qualify for a permit in their own right. Where children are to attend school during their stay, a separate *study permit* needs to be obtained for them in any case until such time as they are granted *permanent residence*.

In terms of the current amended legislation, the term "life partner", when referring to the partnership of two foreigners, includes non-married homosexual or heterosexual partners only if the partnership was concluded in South Africa or is officially recognised in the applicants' country of origin or residence.

### 4.1. Visit

The family of holders of *extended visitor's permits* may be granted *visitor's permits* valid for the same period.

### 4.2. Relatives

The family members of holders of a *relative's permit* need to qualify for a permit in their own right. In most cases, however, they fall within the second step of kinship to the South African relative and can therefore obtain a *relative's permit* themselves.

### 4.3. Students

The family members accompanying the holder of a *study permit* have a right to *visitor's permits* valid for the same period as the *study permit*.

### 4.4. Workers

The family members accompanying the holder of a *work permit* have a right to *visitor's permits* valid for the same period as the *work permit*.

#### **4.5. Business Owners**

The family members accompanying the holder of a *business permit* have a right to *visitor's permits* valid for the same period as the *business permit*.

#### **4.6. Retirees/Pensioners**

The family members accompanying the holder of a *retired person permit* have NO right to *visitor's permit*. The family members need to qualify for a permit in their own right.

#### **4.7. Permanent Residents**

The family members accompanying an applicant for *permanent residence* in most categories are included in the application. This does, for example, not apply to the family of applicants in the retired category. In those cases where the family is not automatically included and cannot qualify in their own right, the family members can apply for *permanent residence as relatives of a permanent resident* as soon as the main applicant's permit is granted.

### **5. Nature of Permanent Residence**

The *permanent residence permit* allows its holder maximum flexibility with regards to entry and exit as well as activities followed in South Africa. In some categories or instances, the permits are issued under certain terms and conditions. After 5 years at the latest, every permanent resident is free to choose his/her activity in South Africa.

The status of *permanent resident* does not affect the holder's citizenship. The *permanent resident* can obtain a South African identity book endorsed as „non-citizen“, but not a South African passport.

Each foreigner is advised to carefully contemplate his/her taking up of *permanent residence*, as this may in some instances lead to the loss of certain tax advantages.

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## **6. Effect of Change in Legislation on Existing Permits and Pending Applications**

All existing *permanent residence permits* remain valid and are not affected by the legislative changes.

All existing temporary residence permits remain valid, but can only be renewed or extended if the relevant requirements of the legislation valid at the time of submission are met.

In terms of general legal principles, all applications submitted before the implementation of the amended laws need to be considered and finalised in terms of the requirements of the previous laws valid at the time of submission.

## **V. Comment**

Some may feel that the South African immigration laws are restrictive and counter-productive to attracting investment into the country. Without particularly wanting to defend the legislator, it needs to be considered that South Africa is one of the main destinations for immigrants from the entire African continent and that its sound legal and democratic structures and its comparatively healthy economy represent a political and economic paradise to most of its neighbours' citizens.

Due to the above South Africa experiences an influx of a substantial number of illegal immigrants specifically from its adjacent neighboring countries. Adding to the above, South African immigration continues to suffer from corruption and fraud. These problems need to be addressed and considered in the country's legislation without discriminating according to race or a foreigner's country of origin.

Many foreigners will be able to find a legal way of staying in South Africa and following the preferred activity. However, the challenge is to identify the appropriate permit category for the specific purpose and situation. What also needs to be considered is the steady increase in monitoring (for instance, controls at the workplace or at home) with regards to the violation or circumvention of immigration laws. Overstaying the validity of a permit incurs penalties and can lead to deportation. If a foreigner is deported once, he/she has no claim to a future permit, especially to a *permanent residence permit*. Further, employers of foreigners and property owners with foreign lessees have specific duties in terms of immigration laws, which are not to be under-estimated.

## VI. ASSISTANCE

Theoretically, it is possible to apply for any type of permit without the help of an attorney or immigration practitioner. However, engaging an expert as a representative before Home Affairs bears a number of advantages.

- Ø Realistic assessment of chances of being granted a particular permit before commencing preparations
- Ø **Accurate and up to date** information on appropriate permit and respective requirements
- Ø Co-ordination and advice on optimal timing of relevant elements and procedures necessary in the preparation of the application
- Ø No need to put up with compiling and co-ordinating the paperwork, with long queues, negative attitudes and misinformation at Home Affairs
- Ø Certainty about the relevance and consequences of information provided in application

Especially in times of changes in the laws and procedures, a great degree of confusion exists within the Department, which in some cases leads to applicants being seriously

prejudiced when they are not fully aware of their rights. We are registered Immigration Practitioners and have more than 5 years experience in the field. Therefore, we can most competently represent you before the authorities.

IMCOSA offers professional advice and assistance in all immigration matters as well as in many related fields. With regards to immigration, the service includes the following:

- Consultation in respect of the appropriate permit type and respective requirements
- Professional guidance in respect of the necessary documentation and information
- Tight control of time frames/deadlines according to client's individual requirements
- Co-ordination of translation and certification of documents by third parties
- Facilitation of chartered accountant's certificates
- Drafting of a business plan
- Obtaining recommendations by the Departments of Trade and Industry or Labour
- Application for evaluation of applicant's qualifications by South African authorities
- Obtaining extracts from benchmarking organisations' databases
- Liaising with future employer
- Coordination of placement of newspaper & media adverts
- Completing of application forms
- Drafting of relevant correspondence and motivations
- Submitting of the application
- Accompanying the applicant to interviews (depending on region of submission)
- Close monitoring of the application procedure and its timely processing
- Representing the client before the authorities in all aspects
- Collection of the permit (depending on region of submission)

Please feel free to contact us for any assistance you may need.

**Julia Willand**

Director / Assessor iuris / Immigration Practitioner