

Dear clients and friends,

After years of threatening Home Affairs has now finally made the step of publishing new Immigration Regulations. Due to the lack of those the Immigration Amendment Bill of 2011 has not come into force.

This means that in all likelihood South Africa will, from the **1<sup>st</sup> of April 2014** onwards, have **new immigration legislation**. However, the Regulations are currently open for public comment and due to this some adjustments might still occur. As expected the new Act and its regulations mirror the attempt to exercise greater control over the “who” and “how” of immigration due to abuse in former years.

Everything will find its balance and of course immigration and foreign direct investment in general is still wanted and embraced. However, the new Act and its regulations will at the very least cause major uncertainties and also some changes in the coming months.

IBN will have the continued right to legally represent foreigners in South Africa.

### **General Changes**

In future it will not be **possible to change from a visitor's permit (or medical treatment permit) to any other permit within South Africa**, which means, that everybody who wants to stay in South Africa for other purposes but holidaying, will need to apply before hand at the SA embassy in his/her country of residence. Also family members, accompanying their spouses/parents on valid permits, will not be allowed to change their status within the Republic. The only exception made is spouses and children of a holder of a business or working visa, who wish to change to study and work visas.

Furthermore, **everybody** who wants to reside in the Republic for **longer than 3 months, even as a tourist, will have to submit a police clearance certificate(s)**. The new legislation also abolished the possibility to submit any documents (for example police clearance certificates) later. **All applications have to be complete on the day of submission.**

No late submissions, even due to a good cause will be accepted anymore, **all applications** for extensions of changes of condition **have to be submitted the very latest 30 days before the expiry of the current permit**. If the visa was issued for less than 30 days, not later than 7 working days before the expiry of the visa. Anybody who fails to do so will have to leave and submit abroad.

Furthermore **overstay of visas** is now regulated vigorously, a single overstay can cause a person to **be refused reentry to South Africa for 2 to 10 years** (depending on the time lapsed)

Next to other changes the new legislation leaves many aspects up to the **discretion of the minister** who is allowed to **publish certain thresholds and categories from time to time.**

We want to give a quick overview over 4 major permit categories which are affected by the amended legislation:

1) **Business Category:**

- a. the old amount a minimum investment of 2.5 Mio Rand has been taken out, instead the **minister will now determine the minimum amount** from time to time. So far no amounts have been published yet.
- b. Furthermore **businesses must be in the national interest** and
- c. **a letter of recommendation from the Department of Trade and Industry** regarding the feasibility of the business and the contribution to the national interested has to be submitted.
- d. lastly, **60% of the staff must be South African, or permanent residence holders**, which in most cases will be however a relaxation of the old rules, where at least 5 South African employees or PR holders were required.

2) **Work Category:**

- a. A **General Work Permit** now requires a **confirmation letter by the Department of Labour** confirming amongst other things that it was diligently searched for a suitable citizen and that the applicant has the right qualifications and skills
- b. Even though one would expect it, the individual involvement of the Department of Labour is not requested in the section regulating applications for permanent residence in the work category
- c. Quota and exceptional skills permit are abolished or better merged into one permit category which is now called **critical skills**. In order to qualify, the applicant needs to **fall within the critical skills category** which will be published from time to time by the Minister.
- d. On the positive side, the **maximum validity for the Intra Company Transfer Work** permit was raised from 2 to **4 years**.

3) **Retired Category:**

- a. the previous minimum amount of retired income of 20 000 Rand per months has been deleted, instead the **minister will now determine the required amount** from time to time.
- b. On the positive side, it is now explicitly noted in Regulations, that **family members** (spouse and dependent minor children) **can accompany a retiree**, which is a very positive development.

4) **Relative's:**

- a. Life partners of South Africans can only apply for any permit based on the life partnership after the **life partnership has existed for at least 5 years**.
- b. If a dependent child of a South African or permanent resident is applying for a relative's permit, **proof of paternity** has to be submitted
- c. Again it is left to the **minister to determine the minimum amount** which has to be shown by the South African relative.
- d. **Financial assurance** has to be given for all applicants, **also for spouses and minor children of South Africans**, which were expressly excluded from such a requirement in the old legislation.
- e. Also with regard to permanent residence, the **South African relative** does not only have to **assure**, that he/she is willing to take responsibility, but also **that he/she is able to take responsibility for the foreign relative(s)**.

In the light of the above we advise all our clients and interested parties to **apply for permits, permit extensions and especially permanent residence immediately**, should you be in position to do so. An application submitted under the current legislation will have to be processed according to the now existing rules which will give you the security of fulfilling the requirements of the permit you aspire.

**If you** or your staff members have currently **no valid visa in your passport** and do not qualify for legalization and the subsequent submission of a visa application, we strongly **advise you leave the country before the 1<sup>st</sup> of April**, paying the requested fine. Thus avoiding refusal of reentry into South Africa.

As seen above the new legislation is in big parts an empty shell, as most decision of consequence are left up to the minister who has not published any amounts or thresholds to this day.

Our offices in Cape Town, Johannesburg and Stellenbosch are happy and able to assist you with all questions and queries that might come up in this context and will gladly help you to submit any application before the 1<sup>st</sup> of April and of course under the new legislation after the 1<sup>st</sup> of April.

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