

IMMIGRATION MATTERS

RETIREMENT OR SETTLEMENT OPTIONS IN SOUTH AFRICA – AT WHAT PRICE?

We will explain two distinct but closely aligned residency categories, namely, the retired person and the ‘financially independent’ permanent residence permits that normally appeal to a similar applicant. Yet, we will highlight certain features that render the latter permit category to be largely ‘redundant’ to any prospective applicant enjoying a high net worth and a qualifying financial status.

Retired person permit – Temporary or Permanent residence

South Africa, especially the fashionable and cosmopolitan city of Cape Town, has become a destination of choice for many foreigners, predominantly from Europe, to settle and retire, whether on a continuous or seasonal basis, often referred to as the ‘swallows’ who tend to gravitate towards festive summer climates.

We submit that under the retired person permit category our immigration legislation is highly favourable for foreigners to enter and sojourn as a retired person and where necessary obtain authorisation to work. There is no definition of a retired person in terms of the Immigration Act as the requirements place more emphasis on an applicant’s particular financial status than anything else.

There are two options available to a foreigner as a retired person to prove such financial status.

Firstly, a foreigner will qualify if he or she can prove that he or she enjoys a continuous income as a minimum payment of R20 000 per month from a series of retirement type investments defined as a “pension or an irrevocable annuity or retirement account” from the “country of his or her origin”.

Obviously with favourable exchange rates many foreigners will meet this criterion in South African currency terms. Many foreigners from Europe who receive a ‘basic’ pension from Government are already well positioned, taking our exchange rate into account, towards satisfying the required threshold R20 000 per month.

The second option is the converse of the first option and is more of an input-based test. Many prospective retired persons should consider this option in wishing to retire in South Africa as it states that that if a retired person can prove that he or she has a “minimum net worth” from a “combination of assets realising R20 000 per month”, then the financial criteria will be satisfied.

A “combination of assets” or input-based test is not further defined in the Immigration Act and does not require its source to be from abroad, which creates a myriad of investment opportunities, whether locally or abroad, linked to any asset class in the form of fixed property and rental income, cash investments like money market accounts, shares and bonds.

The input-based test must simply prove a minimum return of R20 000 per month without specifying an actual investment amount from any “combination of assets” classes, which allows greater flexibility and with a favourable exchange rate it allows many prospective foreigners to qualify as retired persons.

What must be borne in mind is that a “net worth” in property terms would be assets less any liabilities or mortgage bonds on such assets - so the monthly rental return would be offset by the monthly bonded amount. The Immigration Act is, however, silent on this aspect as to “net worth” but to avoid confusion the literal legal interpretation in our view is reflected by the above “net worth” illustration.

It is likely that that a “net worth” amount could be in the region of about R2,5 million but there is no guidance if a specific asset class shows variable or fixed returns or contains certain bonus provisions to safely show R20 000 per month.

In effect both options, whilst the ‘mechanics’ purport to be different, will ultimately amount to the same test as the wording prescribes R20 000 per month and hence for many foreigners would be attainable.

The remaining requirements set out in our law pertain to administrative matters, which in most cases relate to nominal cash deposits, police clearances, medical and radiological reports, yellow fever vaccination certificates, where required, and other personal particulars.

The only drawback currently in our law as it stands is that it requires each retired person as an applicant in his or her own right to prove the necessary financial status although there are moves afoot to allow an accompanying spouse and dependant children of the main applicant to accompany him or her without the need to prove a financial status as explained above.

The requirements for a temporary or permanent retired person permit are exactly the same save for the usual timeline to finalise a permanent application and in most cases we would recommend that you first obtain a temporary retired person permit and enjoy an initial four year period wherein an application for permanent residence may be submitted as long as the financial status and other requirements are still satisfied.

‘Financially independent’ status – Permanent residence

In keeping with international trends in international immigration law, South Africa has followed similar approaches to that of advanced first world countries like Australia where foreigners who enjoy a high net worth may acquire permanent residency in South Africa as ‘financially independent’.

Currently an applicant who can prove that he or she has a “minimum net worth of R7,5 million” and can pay an application fee of R75 000 he or she can effectively qualify for permanent residency in South Africa. There is no similar category to acquire temporary residency on this basis in South Africa.

There is no definition in our law or other guidance apart from a broad requirement of a R7,5 million “net worth”. There is no clarity as to whether this “net worth” must be from a source locally or abroad.

It is our submission that guidance could be sought from the retired person category and the “combination of assets” must amount to at least R7,5 million. In this case we would propose that any monetary accumulation from any of such asset classes could be taken into account regardless of local or foreign source or monthly return generated.

Just like the retired person category the accompanying spouse or minor dependants would each have to demonstrate this financial status in her or her own right.

The retired person category versus 'financially independent' status

We find it interesting that the financial status in proving 'financially independent' is also an input-based assets test as in the case of the second option of a retired person permit.

The rationale to prove a substantially higher "net worth" of R7,5 million is nonsensical as any applicant wishing to settle in South Africa who enjoys a "net worth" under the retired person category in the vicinity of R2,5 million can achieve the same residency objective without "proving" or disclosing more than is necessary.

Of course, had there been specific definitional guidance as to the classification of a retired person, which there is not, it would compel applicants not complying with such definition, of a particular financial status, to apply as 'financially independent' and not enjoy the option to proceed in terms of a lesser "net worth" route under the retired person category set out in section 20(1)(b).

Moreover, to pay an extra R75 000 that is payable on approval of such 'financially independent' status category also fails to inspire any applicant to take this route.

The only viable rationale for paying the 'premium' for a 'financially independent' permanent residence permit, which has not been regulated or further defined, would be if Home Affairs issued such a permit as an 'over-the-counter' permit or permitted a special dispensation to ease certain prescribed administrative requirements – both these avenues are unavailable.

A temporary residence permit currently takes between one to three months and so it would be far more cost effective and time-efficient to enter South Africa on a visitor's permit or visa - for exempt countries visas are automatically deemed to be visitor's permit upon arrival - then proceed with a standard retired person temporary residence permit regardless of the applicant's high net worth as 'financially independent' and finally apply in due course for permanent residency as a retired person.