SA | ACCOUNTING ACADEMY

THE WIDER IMPACT OF COVID-19 ON THE ACCOUNTANT, EMPLOYER, BUSINESSES AND THEIR CLIENTS

WEBINAR MATERIAL: 24 JUNE 2020

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MODULE 1: INTRODUCTION

1. SA'S NATIONAL LOCKDOWN – SPECIFIC CONSEQUENCES FOR BUSINESSES

Many factors impact the ability of an entity to continue as a going concern. These factors include the industry and geographic area of operations, the financial health of customers and suppliers, and financial liquidity and solvency of the entity.

As a result of the COVID-19 pandemic and the associated deteriorating economic environment, reduced revenues and cash flows could raise questions about the entity's ability to meets its current or new obligations and comply with debt covenants.

Under the going concern basis of accounting, the financial statements are prepared on the assumption that the entity is a going concern and will continue its operations for the foreseeable future, unless management intends to liquidate the entity or cease operations, or has no realistic alternative but to do so.

When the going concern basis of accounting is used, assets and liabilities are recorded on the basis that the entity will be able to realize its assets and discharge its liabilities in the normal course of business.

The world's biggest virus lockdown saves lives, but hurts businesses!

- Most businesses do not have many savings or spare cash lying around. In tough economic times, running a business is difficult enough, and if you don't trade, you don't make money.
- To now be told "you have to close your business" and stay home, has far-reaching and devastating effects on the business, the owners, the employees, the suppliers, all of their families and dependants, and ultimately, the economy suffers.
    - These businesses still have all their usual fixed costs and other running expenses (e.g. rent, salaries, etc.), but they are not earning any income.
    - This could lead to a situation of commercial insolvency (where the company does not have enough funds available to pay the company's debts in the normal course of business).
    - When liabilities exceed assets, factual insolvency exists. This is also commonly referred to as technical insolvency.
- So, through no fault of their own, some businesses might now become commercially and/or technically insolvent (as a result of lockdown).

For some businesses, they have been able to start trading again (after level 5 and level 4 has passed), so their insolvency may have been temporary.

2. SPECIFIC CONSEQUENCES FOR MANAGEMENT, COMPILERS, AUDITORS AND INDEPENDENT REVIEWERS…

- **Adequate disclosure** in the AFS
- Consideration of **going concern** includes solvency & liquidity considerations
- If a company is considered not to be a going concern, then the assets should be considered at their realisable amounts, and the measurement of liabilities should include all liabilities that arise in a liquidation or close-down scenario.

- *When the fair value of an asset is different from the carrying value in the financial statements and accounting records, then when taking into account the fair value of that asset in the factual solvency assessment, it is also necessary to take into account the tax consequences that follow from the notional revaluation of the asset (or a revaluation processed in the books of account and financial statements).*

- Independent Reviewers and Auditors of companies and close corporations that trade whilst insolvent, should normally report this fact accordingly to either CIPC or IRBA, respectively.
- **Compliance with the Companies Act** must be considered – specifically **Section 22** (dealing with carrying on business recklessly or fraudulently

More on Section 22 of the Companies Act

Section 22 of the Companies Act, 71 of 2008 (the Act) empowers **CIPC** to issue notices, and if necessary, compliance notices to companies, which the Commission has reasonable grounds to believe is trading or carrying on business recklessly, with gross negligence or for a fraudulent purpose.

- An amendment to Section 22(2) makes it clear that this provision is concerned only with **commercial insolvency** and not with **balance sheet insolvency.**
- Deals with carrying on business recklessly or fraudulently
- Section 22 of the Companies Act prohibits companies from carrying on their business "… recklessly, with gross negligence, with intent to defraud any person or for any fraudulent purpose …".
- In terms of schedule 5 to the Companies Act, Chapter 14 of the Companies Act, 1973 (the 1973 Companies Act) continues to apply with respect to the winding-up and liquidation of insolvent companies. Chapter 14 of the 1973 Companies Act includes section 424, which provides that where any business of a company is carried on recklessly or with intent to defraud, every person knowingly a party to such conduct is guilty of an offence.
- It is thus unlawful for a company to trade recklessly or with intent to defraud.

Application of Section 22 of the Companies Act on Close Corporations = Refer to the Guidance Note issued by CIPC in this regard

CIPC issues Practice Note 1 of 2020 (dated 24 March 2020) stating:

- ✓ **In light of the COVID-19 pandemic and the declaration of a national state of disaster under the Disaster Management Act, 57 of 2002, CIPC will not invoke its powers under section 22 of the Companies Act, in the case of a company which is temporarily insolvent and still carrying on business or trading. This is only applicable where the Commission has reason to believe that the insolvency is due to business conditions, which were caused by the COVID-19 pandemic.**
- ✓ **This practice note shall lapse within 60 days after the declaration of a national disaster has been lifted.**

3. WHERE IS OUR FOCUS WITH THIS WEBINAR?

Even though our main focus as accountants and auditors has been on the financial and taxation implications, the effects of COVID-19 are so much wider…

There are very important legal, employment, technology and other burning issues that must be anticipated and evaluated.

- Can you cancel a contract because of COVID-19?
- Avoiding contact, is there an easy way to sign documents electronically?
- Are there any accounting considerations that you need to consider?

- Should the impact of COVID-19 on businesses be disclosed in their annual report, as a material risk??
- What are some of the data protection implications of COVID-19 in South Africa?
- Do flexible and remote working arrangements constitute a cybersecurity threat?
- Can you be held liable for distributing "fake news" about COVID-19?

During this webinar we look at these and many other questions currently (or soon to be) confronting South African businesses.

We have strived to provide you with user-friendly publications and relevant information to be able to operate more efficiently and consider

Where SAAA has already presented webinars on some of the topics mentioned during this webinar, please refer to SAAA's online shop to access webinar recordings.

4. WHAT DOES THE FUTURE LOOK LIKE?

Employers must also bear in mind that even after the virus has been addressed effectively, there will be legal consequences resulting from the effects thereof on the workplace for many years to come.

Where dismissals and retrenchments eventuate as a result of the operational disruptions caused by the virus, courts will want to see what employers did at the time of the spread of the virus to mitigate against the risk of retrenchments.

The disruption caused by COVID-19 must also been seen as a catalyst for employers to adapt their operations so as to successfully move into the 4th industrial revolution.

This entails that employees' ability to work be decentralized from the physical workplace into employees. homes where possible.

Ultimately, in view of the unforeseen threats posed by COVID-19 to business, employer's would be wise to tread carefully and undertake a thorough consideration of the above factors in determining their obligation to pay employees so as to avoid the negative long-term legal consequences which may visit upon them should they not.

MODULE 2: LEGAL REPERCUSSIONS

As we navigate the unchartered waters of COVID-19, we consider the potential points of impact on businesses.

1. CIPC CERTIFICATE NOT REQUIRED UNDER ALERT LEVEL 3

Following a judgement by the Pretoria High Court, businesses are now able to produce their own permits for staff to present to law enforcement when they are travelling to and from work, or while conducting business during the work day whilst we are in lockdown Alert Level 3.

Businesses will no longer have to rely on government issued CIPC certificates to conduct business during the nationwide lockdown's Alert Level 3 after a court judgement was handed down deeming prior directives by the Department of Small Business Development illegal.

The High Court confirmed at the beginning of June 2020 that a CIPC certificate is not a requirement for businesses to operate under Alert Level 3. The only requirement is that employees who travel across district-, metropolitan- or provincial borders for work purposes, must be in possession of a permit, issued by the employer, that complies substantially with Form 2 that was used during Level 4 lockdown.

The judgment was unequivocal in its demand that no law enforcement officers should request a CIPC certificate from anyone, and said that with regard to the possibility that the need for such certification may arise should certain areas in the country be forced to return to Level 4 or 5 restrictions, such an outcome was purely hypothetical at this stage.

Click here to download the 7-page court order:

https://www.sakeliga.co.za/wp-content/uploads/2020/06/SAKELIGA-v-THE-PRESIDENT-et-al-ORDER-AND-REASONS.pdf

2. OHS – OCCUPATIONAL HEALTH & SAFETY MEASURES

Occupational Health & Safety measures are vital – especially since the return of even more workers under Alert Level 3 of our National Lockdown.

You can find a nice summary on pages 14 & 15 of the Employment Survival Guide (issued by CDH on 9 April 2020) – available to you as a Source Document.

OHS Regulations & Directive issued

The Department of Employment and Labour has issued amended regulations which employers, who are permitted to operate under Alert Level 3, need to comply with to ensure a safe working environment in accordance with prevailing legislation.

OHS Toolkits

In order to assist employers with compliance with these regulations, **SAAA has made Toolkits available to you, which may be utilised in implementing the necessary measures.**

The key areas that have been updated in the amended regulations are:

- Return to work policy
- Workplace Plan

The following concept is also **added:**

- Vulnerable employee policy

The amended regulations also provide links to various **Department of Health** guidelines that can assist employers in dealing with Covid-19 in the workplace, in Annexure A thereof.

- **Guidance on vulnerable employees and workplace accommodation in relation to COVID -19 (V4: 25 May 2020)**

  http://www.nioh.ac.za/wp-content/uploads/2020/05/20_2020-V4.-Guidance-on-vulnerable-employees-and-workplace accommodation....pdf

- **Guidance note for workplaces in the event of identification of a COV1D-19 positive employee**

  http://www.nioh.ac.za/wp-content/uploads/2020/05/guidelines_positive_worker_19_May_20.pdf

- **Clinical management of suspected or confirmed COVID -19 disease Version 4 (18th May 2020)**

  https://www.nicd.ac.za/wp-content/uploads/2020/05/Clinical-management-of-suspected-or-confirmed-COVID-19- Version-4.pdf

- **Guidelines for symptom monitoring and management of essential workers for COVID -19 related infection**

  http://lwww.nioh.ac.za/wp-content/uploads/2020/05/guideline_positive_worker_19_May_20.pdf

- **How to use mask cloth**

  http://www.health.gov.za/index.php/component/phocadownload/category/631#

Please note that not all the requirements will be applicable to every workplace and that the documents are of a generic nature. Therefore, employers will need to assess the risk of their particular workplace and amend the documentation accordingly.

Refer to more information on the SAAA Toolkits in Module 8

Updating workplace plans to include "*vulnerable persons*"

On 25 May, the Department of Health issued a guidance document related to the treatment of "*vulnerable persons*" in the workplace. (Guidance Document). The Guidance Document expanded on the list of persons who are at particular risk of experiencing severe effects should they contract COVID-19. Pursuant to the Guidance Document, the Department of Employment and Labour issued further regulations consolidating occupational health and safety measures in workplaces who have commenced operations, replacing the directive issued on 29 April 2020. Employers are therefore required to update their workplace plans to include provisions related to, inter alia, "*vulnerable persons*".

The original OHS Regulations are available to you as a Source Document

CDH also published a 3-page summary document on Vulnerable persons and updating workplace plans to include "Vulnerable persons", setting out:

(1) List of vulnerable persons

(2) Protocol regarding vulnerable persons

(3) Where a vulnerable person returns to the workplace, an employer may consider the following measures to take upon their return

(4) Applicable leave procedures for employees who cannot work from home and who are not permitted to return to the office

This 3-page summary is available to you as a Source Document

CDH's Updated Employment Revival Guide for Alert Level 3 Regulations contains Questions 13 to 28 on OHS topics

Refer to Module 3 below

3. PEOPLE ARRESTED FOR SPREADING FAKE NEWS ABOUT COVID-19

Below are some shocking news articles that clearly shows that one of the legal repercussions for individuals might be jail time!

Stephen Birch in court for COVID-19 fake news

7 April 2020 – Jacaranda FM

A Cape Town man has appeared in court for spreading fake news on COVID-19.

Stephen Birch was arrested for allegedly posted a video on social media claiming that the test kits used for COVID-19 are contaminated.

He also encouraged people not to be tested.

A spokesperson for the National Prosecuting Authority (NPA) in the Western Cape Eric Ntabazilila says the matter was postponed.

"Stephen Donald Birch appeared at Cape Town Magistrate's Court this morning, charged with breach of the disaster management regulations. He is released on warning and will return to court on 14 July."

Birch could face a prison sentence of six months or a hefty fine is he is found guilty of spreading fake news about coronavirus.

A Cape Town man has been arrested for posting a video claiming that coronavirus testing kits are contaminated.

The video, in which he calls for South Africans to refuse coronavirus testing, went viral on social media.

Police spokesperson Mathapelo Peters says the 55-year old man is expected to appear in court on Tuesday following his arrest at Parow Police Station the previous day.

"The suspect has been charged in terms of Regulation 11 (5) (c) of the Disaster Management Act, in relation to publishing any statement through any medium, including social media, with the intention to deceive any other person about measures by the government to address COVID-19."

South Africans could face a prison sentence of six months for spreading fake news about coronavirus, according to new regulations introduced by Cooperative Governance Minister Nkosazana Dlamini-Zuma.

How do I report Fake News?

Email: fakenewsalert@dtps.gov.za

WhatsApp line: 067 966 4015

Eight nabbed for spreading fake news on COVID-19

7 April 2020 – Jacaranda FM

Police Minister Bheki Cele says 8 people have been arrested for allegedly spreading fake news about COVID-19.

This includes two people who were arrested in KwaNongoma in Kwa-Zulu Natal on Monday.

The pair allegedly stole their father's police uniform told residents 'Cele is dead' and that they were now allowed to buy alcohol.

Cele addressed residents in Secunda in Mpumalanga on Tuesday morning, warning them not to misuse social media.

"They took the father's uniform and they make a call that everybody must go and buy liquor, Bheki Cele is dead.

"Saying that in the uniform of the police."

Cele also warned the mainstream media to be careful when disseminating information.

"Also, people from mainstream news, check the social media, because it can destroy. Especially under these trying time.

"In these are times we must work together and work in unison."

Pretoria man behind bars after he mocks coronavirus measures in viral video

5 April 2020 – Jacaranda FM

Police in Pretoria have arrested a 23-year-old man on charges of not adhering to the regulations set out in the Disaster Management Act.

His arrest comes after videos showing two men travelling around Pretoria, with one of them swearing and mocking efforts to curb the COVID-19 virus, went viral.

According to national police spokesperson, Vishnu Naidoo the man also bragged about not complying with laws put in place to contain the virus.

"In one of the snippets, one man appears to be standing in front of a police station and continued swearing about the virus," says Naidoo.

"The matter was investigated and the suspect was traced and found inside a residential complex in the Lyttelton policing area. The suspect is likely to face charges of at least contravening Regulation 11B of the Disaster Management Act 2002."

The man, who is currently in police custody, is expected to appear in the Pretoria Magistrates Court on Monday.

"The arrest of this suspect, as well as at least six other suspects who have been arrested for creating such videos and posting fake news, should be a reminder that the security forces enforcing the regulations to contain the COVID-19 virus have the capacity and capability to identify those responsible for such transgressions, however long it may take," warns Naidoo.

"People are urged to view the scourge of COVID-19 virus seriously. The regulations that are being enforced are not to punish people but to protect lives against this pandemic".

4. SOME POPULAR FAQS ANSWERED

The following FAQs were compiled from various sources, and under no circumstances represent legal advice or even the only possible answer. It merely represents the points of view of those who are considered experts, and is provided for information purposes.

Can you cancel a contract because of COVID-19?

Yes, you can if it is objectively impossible to perform your contractual obligations and even in the absence of a *force majeure* clause in the contract.

Definition of *force majeure* (translates literally from French as "superior force")

= unforeseeable circumstances that prevent someone from fulfilling a contract

= refers to a clause that is included in contracts to remove liability for natural and unavoidable catastrophes

= a common clause in contracts that essentially frees both parties from liability or obligation when an extraordinary event or circumstance beyond the control of the parties, such as a war, strike, riot, crime, plague, or an event described by the legal term act of God (hurricane, flood, earthquake, volcanic eruption, etc.), prevents one or both parties from fulfilling their obligations under the contract. In practice, most force majeure clauses do not excuse a party's non-performance entirely, but only suspend it for the duration of the force majeure

= Where a contract is silent on force majeure or no written contract is in place, we need to follow the principles of the common law. South African law is, however, quite strict in the sense that it does not excuse the performance of a contract in all cases of force majeure. There are certain conditions that must be fulfilled in order for a force majeure to trigger impossibility to perform. These are:

- the impossibility must be objectively impossible;

- it must be absolute as opposed to probable;
- it must be absolute as opposed to relative, in other words if it relates to something that can in general be done, but the one party seeking to escape liability cannot personally perform, such party remains liable in contract;
- the impossibility must be unavoidable by a reasonable person;
- it must not be the fault of either party; and
- the mere fact that a disaster or event was foreseeable, does not necessarily mean that it ought to have been foreseeable or that it is avoidable by a reasonable person

= You may wonder whether you are protected during this period by appropriate contractual rights, particularly in relation to *force majeure*, as businesses will start to receive notices in terms of force majeure and might also require such notices to be sent out.

= A company must prove that the *force majeure* event was not within its reasonable control. There must usually be a link between the *force majeure* event and the failure to perform. The important question remains: is it actually impossible for a party to fulfil its obligations under the contract?

= While a party may be excused from its obligations under the contract while the *force majeure* continues, there is usually an obligation to use all commercially reasonable efforts to alleviate and mitigate the cause and effect of the force majeure event and resume performance of its obligations once it is able to do so.

Remedies available to parties in the event of a *force majeure:*

= The general effect of a *force majeure* is that parties are excused from their obligations. This means that a party who validly fails to perform as a result of a *force majeure* cannot be sued for any damages suffered by the other party as a result of the non-performance of the other.

Importantly, each situation will depend on its own facts and the wording of the contract.

Also, in the COVID-19 crisis specifically, developments must be considered carefully before concluding that there is an impossibility of performance or the triggering of a *force majeure* clause. Claiming impossibility or *force majeure* incorrectly could be a breach of contract and could give rise to a damages claim against you. In particular any impossibility of performance must be absolute and it is any event, including COVID-19 and its consequences, that could bring about an impossibility or *force majeure* provided it is unforeseeable with reasonable foresight, unavoidable with reasonable care and not the fault of either party.

A *force majeure* clause in a contract will take precedence over the common law and care must be taken to comply with any agreed time limits or process requirements set out in the contract.

Avoiding contact, is there an easy way to sign documents electronically?

Yes, there is. Although there are important exceptions, electronic signatures are generally valid provided that the signature is specific to the person signing.

That requirement can be satisfied by a message from that person's computer which includes a scan of their signature or simply adding a typed name, provided it is intended by the person to serve as a signature and acceptance of the content of the message. A contract signed in this way, again subject to specific exceptions, will be valid and enforceable.

There is a distinction between an electronic signature and an advanced electronic signature which is only available through an accredited agency and includes a secure process with specific software to secure the message.

Can I be held liable for distributing 'fake news' about COVID-19?

The publication and dissemination of 'fake news' in South Africa is not generally prohibited but new regulations published under the Disaster Management Act, 2002 on 18 March 2020 regarding COVID-19 state that "any person who publishes any statement, through any medium, including social media, with the intention to deceive any other person about (a) COVID-19; (b) COVID-19 infection status of any person; or (c) any measure taken by the Government to address COVID-19, commits an offence and is liable on conviction to a fine or imprisonment for a period not exceeding six months, or both such fine and imprisonment."

The intention of the regulation is to avoid the malicious spreading of false news and unnecessarily creating panic in the public. The public should critically review information it receives about COVID-19 and the source of such information. The above quoted regulation is limited to the publishing of any statement regarding COVID-19 and not generally to 'fake news' (in the colloquial understood sense).

When sharing information regarding COVID-19 on social media, it is imperative to ensure that this information is obtained from accredited institutions such as official government channels of communication, medical journals, the World Health Organisation or the Center for Disease Control and Prevention.

To quote the director-general of the World Health Organisation, Tedros Adhanom Ghebreyesus, "We're not just fighting an epidemic; we're fighting an infodemic. Fake news spreads faster and more easily than this virus, and it [is] just as dangerous".

Working remotely: isn't there a risk?

Certainly, the panic around COVID-19 will have cyber criminals licking their lips as more and more employees work from outside their usual office environment. Some IT environments are designed to cope with that kind of scenario, are very secure, with two-stage authentication including passwords that require change regularly, encryption and 24/7 monitoring. But that is not the norm. Where your service providers are handling your sensitive information, it is certainly prudent to check whether that information is secure both within that service provider's ordinary environment but particularly where people are accessing and processing your information remotely. With IT structures facing unexpected pressure, your enquiries should also include the backup arrangements employed by the service provider.

Where you are the service provider, it is self-evident that you must comply with your contractual obligations. Moreover, when handling electronic information (especially personal information) and communicating electronically, you must act reasonably. Allowing external access to your systems without sufficient security by employees working from home is probably not what a reasonable business person would do and that could create an opportunity for cyber criminals. Where you act unreasonably and third parties suffer a loss as a result, you will be exposed to claims for damages

What are some of the data protection implications of COVID-19 in South Africa?

In order to mitigate the spread of COVID-19 in South Africa, both public and private organisations will be required to implement data-sharing strategies and procedures in respect of COVID-19-related personal information. Organisations in the European Union – the current epicentre of the COVID-19 pandemic – are already in a position to implement such data-sharing strategies after having received guidance from European data protection regulators.

MODULE 3: EMPLOYMENT ISSUES

1. UPDATED EMPLOYMENT REVIVAL GUIDE: ALERT LEVEL 3 REGULATIONS

18-page document published by CDH (Cliffe Dekker Hofmeyr) on 5 June 2020

An *Employment Revival Guide for Alert Level 4 Regulations* was published by CDH on 1 May 2020, and is available for download on their website. Simply click on the following link:

https://www.cliffedekkerhofmeyr.com/export/sites/cdh/en/news/publications/2020/Employment/Downloads/Employment-Revival-Guide-1-May-2020.pdf

Alert Level 3 is currently in place

Alert level 3 (AL3) of the lockdown is aimed at the re-commencement of all economic activities and allowing most employees to resume work under certain conditions, save for specific exceptions.

In terms of the new AL3 regulations, all businesses and other entities may resume economic activities provided the business or entity satisfies the following:

(a) adherence to all health and safety protocols as well as social distancing measures,

(b) a phased return to work in order to ensure the workplace is safe,

(c) the return to work being done in a manner that avoids risks and infections and

(d) the business or entity does not fall within the list of exclusions.

Employees who can work from home, remain encouraged to do so.

Vulnerable employees as defined by the Department of Health are encouraged to continue working from home insofar as possible, alternatively employers must take special precautions to ensure the health and safety of vulnerable employees who return to work. ***Refer to OHS Regulations and Guidance***

Employer's duties, Compliance Officer, Social & physical distancing, Workplace Accommodation, etc. PLUS 67 Questions and Answers

This guide is aimed at assisting employers in the resumption of operations in accordance with AL3, and contains the following sections, and answers various questions:

1. Employer's duties
2. COVID-19 Compliance Officer
3. Social and physical distancing
4. Manufacturing, construction, business and financial firms who employ more than 500 employees
5. Prohibited economic activities
6. Vulnerable Employees and Workplace Accommodation
7. How does an employer identify employees who are considered high risk in terms of the applicable regulations and Guidance Document?
8. How does an employer assess whether a vulnerable employee may return to the workplace?
9. How does an employer protect and manage vulnerable employees in the workplace?

10. What other options are recommended to reduce the potential exposure to COVID-19 vis-à-vis vulnerable employees?
11. Where a vulnerable employee cannot work from home, what leave procedures will apply to said employee?
12. How are employers required to manage a return to work by vulnerable employees as well as incapacity management of vulnerable employees?

Health & Safety – Questions 13 to 28

TERS and other remuneration related issues – Questions 29 to 67

68. Can an employer implement a temporary layoff after the lockdown?
69. How does an employer, after the lockdown, obtain the agreement of employees for a temporary layoff or reduction in remuneration?
70. Is there a different retrenchment process during the lockdown or National Disaster?
71. Is it a fair reason to retrench employees after the lockdown because the employer realised that it can do better business by employing technology?
72. What happens when the probation period of an employee comes to an end during the lockdown period and the employee is not working?
73. Where an employer suffers irreparable financial distress as a result of the partial or complete closure of their business operations as a result of COVID-19 and would therefore have to embark on retrenchments, may an employer rely on supervening impossibility of performance to automatically terminate contracts of employments with employees?

This guide is available to you as a Source Document

2. UPDATED EMPLOYMENT SURVIVAL GUIDE – KNOW YOUR EMPLOYMENT RIGHTS

16-page document published by CDH (Cliffe Dekker Hofmeyr) on 9 April 2020

(previous update published on 25 March 2020)

The COVID–19 (or "Coronavirus") is still spreading. Employers and employees have a role to play in limiting its impact. In this alert, we answer some of the most pressing questions that have been asked over the past few days.

Contents:

- The Coronavirus and the workplace: #coughcoughsneeze?
- Important developments impacting occupational health and safety (OHS) in the wake of COVID-19

This guide is available to you as a Source Document

3. REFUSAL TO WORK BY EMPLOYEE DUE TO COVID-19

The Department of Employment and Labour issued amended regulations in respect of OHS requirements and return to work polices that employers, who are permitted to operate under Alert Level 3, must adhere to.

Among these regulations is a directive that an employee may refuse to perform any work, including attending work, where "with reasonable justification", it appears to the employee that performing such work will pose a serious or imminent risk of exposure to COVID-19.

Although a no-work-no-pay policy will apply, the employer may not take any disciplinary action against such an employee for exercising this right.

The difficulty with this issue is that "reasonable justification" will have to be determined on a case by case basis and creates a massive opportunity for abuse by employees who simply do not want to come to work.

4. WHAT ABOUT AN EMPLOYEE'S HOLIDAY LEAVE IN SOUTH AFRICA AFTER COVID-19?

CDH article – 13 June 2020

COVID-19 lockdown regulations have placed strict limitations on both domestic and international travel.

With the restriction of movement employees have either cancelled their annual leave or are holding onto their days with the hope of taking a break after the Covid crisis, notes Cliffe Dekker Hofmeyr.

As a result of this, companies are faced with the challenge of accumulated unused leave which presents a financial risk. A recent survey by Wills Towers Watson shows that one-third of local companies have had to change their staff holiday policy due to COVID-19, with a further 25% thinking of doing so in response to the leave crisis.

According to Aadil Patel, director and national head of commercial law firm Cliffe Dekker Hofmeyr's Employment practice, often, employers allow employees to accumulate leave in excess or the statutory leave of 15/21 days during an annual leave cycle.

If employees have unused accumulate leave, this will increase the financial burden on the employer if they have a "cash-in" policy or should they embark on a retrenchment exercise.

"Employers may request employees to go on statutory leave. This is obviously dependent on their operations needs despite their leave credit. The most preferred option would be to negotiate the exercise of employee benefits especially if there is a financial component such as in the case of "cash-in" policies."

Wills Towers Watson's poll found that a third (33%) of South African businesses has had to change their staff holiday policy due to COVID-19, and a further quarter (25%) is thinking of doing so.

The issue has arisen because, understandably, many people are unwilling or unable to book their usual holidays during the global pandemic, either because of travel uncertainty or restrictions, or because they feel that taking time off during the upheaval would be a waste of annual leave.

The Willis Towers Watson survey, which looked at HR issues caused by COVID-19, also asked businesses what they will do about unused or excess holiday leave.

Half (52%) said they will allow it to be carried over into the next holiday year. 12% said that any unused leave will be lost, and 6% said they will buy unused days back from their staff. However, almost a third (30%) said they were still unsure what to do.

Melanie Trollip, director of talent and reward at Willis Towers Watson South Africa, said: "Too many people are sitting on a growing pile of unused holiday, and that's becoming a headache for many businesses.

"The risk is that everyone wants to take time off once the crisis has eased and the economy is starting to recover. That could create a lot of disruption and bottlenecks, just when staff are needed the most.

"Managers should discuss this with their staff and decide the best way of coping with the holiday glut. The solution will vary from company to company, with many opting to let staff carry leave forward, or to be more generous in the amount that can be carried.

"Some businesses have offered to buy holiday days back from staff, but that may be difficult for many in the current economic climate. Many businesses are being less flexible – they are setting dates when holidays must be taken or are running a 'use it or lose it' approach.

"It is really important that people take time off for their wellbeing and health, even if it does not involve a long holiday that involves travel. During the pandemic, we may need to rethink our approach to holidays a little. Staycations and more long weekends may be a way of using leave up."

Unused leave that is carried over can create financial issues for a business too, because accrued leave pay is registered in a company's accounts as a liability, said Trollip.

5. SOME FAQS ON LEAVE ANSWERED

The following FAQs were compiled by consulting attorneys, and under no circumstances represent legal advice or even the only possible answer. It merely represents the points of view of those who are considered experts, and is provided for information purposes.

Can an employer place a worker who presents symptoms of COVID-19 on sick leave?

Yes, the employer must place this employee on sick leave in terms of section 22 of the Basic Conditions of Employment Act, 75 of 1997 (BCEA). If the employee's sick leave entitlement is exhausted, the employer must make an application for an illness benefit in terms of COVID-19 TERS.

Is there a TERS claim where the employer required the employee to take annual leave during the lockdown in terms of section 20 (10) of the Basic Condition of Employment Act?

An employer, who has required an employee to take annual leave may set off any amount received from the UIF in respect of that employee's COVID-19 benefit against the amount paid to the employee in respect of annual leave provided that the employer credits the employee with the proportionate entitlement to paid annual leave in the future.

In addition, in terms of a TERS Directive published on 26 May 2020, the purpose of the TERS directive has been extended to include providing a benefit to workers who have been directed to take annual leave in terms of the relevant provisions of the BCEA.

What about employees placed on annual leave during the lockdown – do they get paid for public holidays and, if not, may they claim under TERS?

Employees on annual leave must be paid for the Public Holiday as under normal circumstances.

There is a TERS claim in respect of the annual leave provided an employee is credited with the proportionate leave entitlement.

Employees are on a Fixed Term Contract ending March 2020. Business closed. They have no annual leave to utilise while on lockdown. Must the employer implement unpaid leave or pay a prorated salary? Is there a TERS claim?

If the end date is clearly stipulated in the fixed term contract, the contract must end, even during the lockdown. While the company can use their discretion regarding negative leave, it is recommended that an agreement is reached between the employer and employee regarding negative leave.

In the case of an employee diagnosed with COVID-19, will they first be entitled to the normal sick leave instead of claiming the illness benefit in terms of TERS or COIDA?

COVID-19 has recently been declared an occupational disease in terms of COIDA. This means that if an employee is absent from work due to contracting the virus during the course and scope of his/her employment, such leave will be covered in terms of COIDA.

If the employee contracted the COVID-19 virus outside of the course and scope of employment, the employee must take sick leave. If the employee is diagnosed with COVID-19 and is quarantined they will qualify for the Illness benefit under the directive first. The reasonable approach is to conserve the employee's right to sick leave as provided by the BCEA.

Does an employee accrue leave during the lockdown when the employee is not working?

Based on section 20(2) of the BCEA, employees can accrue leave during the lockdown period whether they work or not unless they accrue the leave on a daily basis – in other words per agreement of 1 day of leave for every 17 days worked.

Employees must take their annual leave within 6 months after the leave cycle. If their leave was scheduled during the lockdown, can it be cancelled and moved to another later date in the year even after the 18 month period?

When leave has been granted to an employee the employer cannot unilaterally cancel the leave. The leave may, by agreement, be rescheduled for a later time.

MODULE 4: CYBER SECURITY CONCERNS

1. WORKING REMOTELY

As a response to the outbreak and increasing number of COVID-19 cases, more companies and organisations are encouraging or instructing employees to work remotely. With an increased reliance on technology due to remote working arrangements, entities may be faced with cybersecurity challenges including cyber-attacks and cyber-related fraud. We outline some considerations for organisations below.

2. SOME POPULAR QUESTIONS ANSWERED

The following FAQs were compiled from various sources, and under no circumstances represent legal advice or even the only possible answer. It merely represents the points of view of those who are considered experts, and is provided for information purposes.

Does your company have an information security or similar policy in place?

We advise all organisations to review their information security policies and to educate employees on best practice. Of particular relevance in the present circumstances should be organisations' incident response plans and how the organisation will react in the case of a data breach or cyber-attack. Policies should outline practical steps which employees can take in the event of an alleged or actual data breach or cyber-attack, including who to contact and the contact details of that person(s), the procedure for escalation and how to minimise losses.

We recommend that organisations circulate their incident response plans and information security policies to employees and draw attention to the relevant provisions to ensure employees are familiar with the steps to follow. To the extent that an organisation does not have a policy or response plan in place, we recommend drafting basic guidelines which are specific to the current challenges posed by COVID-19 and which addresses the most pressing and important risks which may arise, and circulating this as soon as possible.

Organisations should actively monitor the relevant regulatory authorities for updates or changes regarding COVID-19 and ensure that their policies and plans are updated to align with the latest official rules or recommendations from credible institutions such as the Centre for Disease Control and Prevention, the relevant government authority or the World Health Organisation. This may include updates to the number of days an employee should self-quarantine if they have potentially been exposed to COVID-19, the number of persons that may congregate at the office at the same time, or the manner in which COVID-19 is transmitted.

Oh no, I was phished! What can I do?

You should immediately report any fraudulent activity to your IT department and change all of your passwords and restart your computer.

If you are worried that you or your business are at risk as a result of the phishing incident or someone has hacked into your system or is holding some of your data ransom, you should report this to the South African Police Services and ask them to open up an investigation. You should work with your company and consider hiring an IT security company or private investigator that specialises in cybercrime investigations to assist you.

Phishing, hacking, identity fraud and computer-related extortion are currently offences under sections 86 and 87 of the Electronic Communications and Transactions Act 25 of 2002. A person found guilty of these offences faces a fine or imprisonment of up to 5 years. A fraudster can also be tried for fraud and theft under the common law.

If you are able to locate the perpetrator, you can also bring a delictual claim against them and receive monetary compensation for any financial losses suffered. You can also bring an interdict against the perpetrator to prevent them from sharing any of your data and get them to return data that is in their possession to you.

Do flexible and remote working arrangements constitute a cybersecurity threat?

The era of the millennial workforce and the rise in technology and connectivity has required a dynamic shift toward flexible and/or remote working arrangements in South African corporate spaces. These flexible working arrangements, which are designed to depart from the notion that employees need to physically attend the office during traditional working hours, usually envisage scenarios where employees can clock in their hours from the comfort of their own homes, a coffee shop or even abroad. As a response to the COVID-19 pandemic, more companies and organisations are encouraging or instructing their employees to work remotely.

With an increased reliance on technology due to remote working arrangements, companies may be faced with cybersecurity challenges including cyber-attacks and cyber-related fraud. Despite cyber security software that may be available to employees, there is an added inherent risk in accessing a company's network from any location other than the workplace. Employees who work remotely and use public networks whilst doing so, such as the free WIFI available in cafés or airport lounges, are therefore vulnerable to the increasing threat of cyber-attacks.

The most common forms of cyber-attacks include the interception of email correspondence and phishing scams. This often occurs when cybercriminals monitor the servers of either the sender or recipient of an email communication and strategically intercepts the communication by posing as a sender.

Employees should also be aware that there has been an increased number of reported phishing scams on email related to the COVID-19. There are reports of fraudsters impersonating agencies such as the World Health Organization, a company's human resources department or other government agencies enticing people to open up attachments or to click on links with information regarding COVID-19. Attackers are then able to push malware, ransomware and attempt to gain access to a personal information and passwords.

Email interception, hacking, identity fraud and computer related extortion are recognised as offences under the Electronic Communications and Transactions Act No 25 of 2002 (ECT Act), and the maximum penalty is a fine (unspecified) or imprisonment for a period not exceeding 12 months. The Cybercrimes Bill [B6 of 2017] will, once effective, create a variety of new offences which do not currently exist in South African law and afford companies with a degree of comfort relating to the prosecution of cybercrime offences.

Although South African law currently does not specifically impose a duty to implement cybersecurity measures in an organisation, the Protection of Personal Information Act No 4 of 2013 (POPI Act) (the substantive provisions of which have not yet commenced) does contain obligations on responsible parties (data controllers) to implement reasonable technical and organisational measures to safeguard personal information in their possession or control against unauthorised access, which will likely include adopting cybersecurity measures.

According to the latest annual Cost of a Data Breach Report, conducted by the Ponemon Institute, the average cost of a data breach in South Africa is approximately R43,3 million. As a result, flexible and remote working arrangements may pose a substantial and costly risk to employers from a cyber security perspective.

Against this backdrop, it is imperative for business to review and adopt an information security policy which employees must adhere to. Employees should be encouraged not to connect to unsecure or public WIFI and utilise, where applicable, VPNs to protect their company's proprietary information. Common sense should also prevail, employees should check URL's before clicking on any links and beware of suspicious emails. With an increased use of teleservices such as Skype, Microsoft Teams, Zoom and the like, employees should ensure that meeting requests are legitimate prior to joining any meeting and refrain from taking 'shortcuts', such as sending documents to colleagues via unsecured instant messaging services, discussing confidential work matters on public chat platforms, saving documents to their desktop instead of on secure locations and using unencrypted personal devices for work matters. Any work should occur via the employer's designated channels for remote working, such as VPN's or servers.

Companies should insist that any remote working arrangement should occur via its designated digital channels for remote working, such as VPN's or servers.

MODULE 5: ACCOUNTING CONSIDERATIONS

1. IMPAIRMENT IN A NUTSHELL

Is inventory still fairly valued?

What about the carrying values of property, plant and equipment, receivables or even goodwill?

- **IFRS**: Expected credit loss – the calculation of this would probably have changed, because the exposure defaults have changed
- **IFRS for SMEs**: Provision for bad debts is important due to the fact that your customers are also battling financially
- **PPE**: if your PPE is idle, is it now impaired? The depreciation does not stop as per IAS16 just because the PPE is idle.
- **Intangible assets**: impairment must be tested annually. Discounted Cash Flows would still need to be done, but the way that the assumptions are used (due to COVID19) will change, and your cost of capital (risk rating) will also increase
- When is the company allowed to recognise revenue = when you've done the work and control has been passed to your customer. If during COVID19 the control has not passed, you would not be able

2. IMPACT ON AUDITS ALREADY ON THE GO

Communicate with your auditors, as there may be physical limitations on the audit (especially where the fieldwork was already on the go when lockdown started).

In general, there is a significant increase in uncertainty, and the auditor will evaluate and report accordingly.

Remember that Auditing is not classified as an essential service!

Auditors are referred to IRBA's webpage for guidance in this area.

3. SUBSEQUENT EVENTS

Adjusting VS Non-adjusting event – always consider disclosure

- **Dec 2019** year end = non-adjusting event
- **Feb 2020** year end = look at if event has taken place already or not
- **Mar 2020** year end = Because this was smack in the middle of the lockdown period, you were not able to do an inventory count. You might be able to do a count at end of April and roll it back

Refer to SAICA Educational Module available on this topic https://www.accountancysa.org.za/covid-19/saica-resources/covid-19-ifrs/

4. GOING CONCERN

If COVID-19 creates or increases uncertainty about the ability of the business to continue, what needs to be communicated in the financial statements?

- You must revise your budgets, assumptions, etc.

- When will your customers be able to pay again?
- Break up the period = Look at the 1st 12 months after year end, and then look at the period thereafter (the effects of COVID-19 might be felt for years to come)
- Just make sure that you make full disclosure of your assumptions, and the sensitivities (like your growth rate) and then the significant sources of uncertainty (what happens if the Rand depreciates)
- Remember that the AFS should paint the picture for the users. At least try and provide the information that you can.

- *Refer to SAICA Educational Module available on this topic* https://www.accountancysa.org.za/covid-19/saica-resources/covid-19-ifrs/

When in doubt, disclose!

Lettie Janse van Vuuren has already presented a webinar on the *Accounting and Auditing considerations for the impact of COVID-19 on Going Concern* on 10 June 2020

You can purchase and access the webinar recording via www.accountingacademy.co.za

5. AMENDMENT TO IFRS 16 REGARDING COVID-19-RELATED RENT CONCESSIONS

IASB issues amendment to IFRS 16 regarding COVID-19-related rent concessions

Website = https://www.ifrs.org/news-and-events/2020/05/iasb-issues-amendment-to-ifrs-standard-on-leases/

The International Accounting Standards Board (IASB) has issued an amendment to IFRS 16 *Leases* to make it easier for lessees to account for covid-19-related rent concessions such as rent holidays and temporary rent reductions.

The amendment exempts lessees from having to consider individual lease contracts to determine whether rent concessions occurring as a direct consequence of the covid-19 pandemic are lease modifications and allows lessees to account for such rent concessions as if they were not lease modifications.

It applies to covid-19-related rent concessions that reduce lease payments due on or before 30 June 2021.

IFRS 16 specifies how lessees should account for changes in lease payments, including concessions. However, applying those requirements to a potentially large volume of covid-19-related rent concessions could be practically difficult, especially in the light of the many challenges stakeholders face during the pandemic. This optional exemption gives timely relief to lessees and enables them to continue providing information about their leases that is useful to investors. The amendment does not affect lessors.

The amendment is effective 1 June 2020 but, to ensure the relief is available when needed most, lessees can apply the amendment immediately in any financial statements—interim or annual—not yet authorised for issue.

The amendment is designed to make it easier for lessees, especially those with a lot of lease contracts, to account for covid-19-related rent concessions while still providing useful information for investors.

The IFRS amendment document can be downloaded by clicking on the following link:

https://cdn.ifrs.org/-/media/project/ifrs-16-covid-19/covid-19-related-rent-concessions-amendment-to-ifrs-16.pdf?la=en

6. LET'S EXAMINES SOME TAX CONSEQUENCES AS A RESULT OF COVID-19

We have found some interesting articles published by CDH that explain some of the practical issues surrounding losses incurred as a result of COVID-19, and have included them below for your perusal.

Some practical tax issues examined

CDH article – 28 May 2020

Businesses and individuals may well ask themselves what practical, day-to-day tax consequences the COVID-19 pandemic now holds for them.

For example, a company operating a financial services business may be obliged to incur expenditure which it would not incur in the ordinary course, such as sanitizers, gloves, masks and temperature measuring equipment for screening employees and customers. A taxpayer is entitled to deduct expenditure provided certain requirements are met. Notably, to be deductible, the expenditure must be "actually incurred in the production of income" as contemplated in section 11(a) of the Income Tax Act, 58 of 1962 (Act).

In the seminal case of *Port Elizabeth Electric Tramway Co Ltd v CIR* 1936 CPD 241 the court held as follows:

"The purpose of the act entailing expenditure must be looked to. If it is performed for the purpose of earning income, then the expenditure attendant upon it is deductible…The other question is, what attendant expenses can be deducted? How closely must they be linked to the business operation? Here, in my opinion, all expenses attached to the performance of a business operation bona fide performed for the purpose of earning income are deductible whether such expenses are necessary for its performance or attached to it by chance or are bona fide incurred for the more efficient performance of such operation provided they are so closely connected with it that they may be regarded as part of the cost of performing it."

Now, strictly speaking, the costs of the items listed in the example above do not *per se* lead to the generation of income for the financial services company. However, there is an argument that the costs should be deductible because they are incurred *bona fide* and the costs are necessary to perform the business operations. In other words, if the company did not incur the costs of protecting staff and customers they would not be able to continue operations effectively, or at all.

Consider also the following scenario. A building contractor is obliged to send his workers home for an extended period
of time. The contractor accordingly is unable to deliver the building on time. The customer sues the contractor for breach of contract. The court awards damages to the customer. Will the contractor be able to deduct the amount of the damages for tax purposes?

Our courts have held on a number of occasions that, generally, damages payable which arise from commercial inefficiency, negligence and willful breach of contract are not deductible in the hands of the taxpayer who is liable to pay the damages: *see Kangra Group (Pty) Ltd v C:SARS* [2018] 4 All SA 383 (WCC). On the other hand, if a taxpayer becomes liable to pay damages through no fault of its own, the damages could be deductible in its hands. In the *Kangra* case, the Court provided the example where a coal supplier faces a damages claim from the buyer arising out of non-delivery due to a breakdown in the railway system resulting in the load not reaching the port on time. There is a potential argument that, if a taxpayer does not deliver goods or services on time as a result of an innocent act or omission resulting from COVID-19, the taxpayer should be able to deduct the amount of the damages paid for income tax purposes.

The payment of damages may give rise to value-added tax (VAT). Accordingly, from the perspective of the taxpayer paying the damages, the amount should be stated as being exclusive of VAT. In the case where a taxpayer receives compensation under a loss-of-profits insurance policy, the compensation will generally be subject to income tax in

the hands of the taxpayer in accordance with *ITC* 594 (1945) 14 SATC 249. The compensation may be subject to VAT in terms of section 8(8) of the Value-Added Tax Act, No 89 of 1991.

Please see in this regard our previous Tax Alert discussing VAT on out of court settlements and payments of damages.

Consider also the position where employees are obliged to work from home.

If, for instance, the company provides a 3G data card to an employee who does not have sufficient data available at home to perform her functions properly during the lockdown period, the company may be able to deduct the expense so long as the 3G data card is utilised for business purposes. The same would potentially apply where the employee purchased the data herself and was then reimbursed by the company. In such case, the employee would potentially not pay income tax on the reimbursement of the data purchases that was used for business purposes.

The employee may incur additional expenses because she has to work from home. Generally, in accordance with section 23(b) of the Act, domestic and private expenses are not deductible by an employee. However, an employee may deduct expenses in respect of the part of her house which is used for work purposes, subject to certain provisos. First, that part of her house must be specifically equipped for work purposes. Second, that part of the house must be used regularly and exclusively for work purposes. Third, the employee must not be paid a fixed salary, or the employee must perform her duties mainly in that part of the house.

The problem that many employees may face is that they may not have a dedicated workspace for the period that they are working from home. For example, if an employee sets up a workspace on the kitchen table, that part of the house will not be used exclusively for work purposes, and the employee will not be able to deduct any expenses.

If employers are obliged to retrench employees, the employers should ensure that any severance benefits are structured correctly so that employees get the full benefit of reduced taxes provided for in the Act that may apply in those cases.

It is apparent from the examples above that COVID-19 has given rise to several unforeseen tax consequences. Taxpayers should consult their tax advisers when incurring expenses, claiming under insurance policies, and dealing with employees.

Tax treatment of losses incurred during lockdown

CDH article – 19 June 2020

There is little doubt that the national lockdown in response to the COVID-19 health crisis has had a negative financial impact on individuals and business alike. In our Tax & Exchange Control Alert of 28 May 2020, we discussed some of the practical day-to-day tax consequences that the lockdown may have on businesses.

In this alert we take a look at the effect that the national lockdown may have on expenditure or losses incurred by individuals and businesses. We also the look at the tax consequences that may arise as a result of employers providing their employees with personal protective equipment. To this end we will consider two scenarios.

Scenario 1: Tax treatment of losses incurred during lockdown

In our first scenario we have a taxpayer trading in general goods or rendering services that were not classified as essential goods and services, under the regulations promulgated under the Disaster Management Act 57 of 2002, which applied from the commencement of the lockdown on 26 March until 31 May, when the lockdown moved to level 3. This means that the taxpayer had to close their doors to customers from 26 March 2020 to 1 June 2020 when level 3 was introduced. During this period, the taxpayer may have incurred expenditure and suffered losses they may wish to claim as a deduction.

In order to calculate the taxable income of a taxpayer, one must deduct from the taxpayer's income all amounts that are allowed as tax deductions in terms of the Income Tax Act 58 of 1962 (Act). In terms of section 11 of the Act, in determining the taxable income derived by any person carrying on any trade, there shall be allowed as deductions

from the income of such person expenditure and losses actually incurred in the production of the income, provided such expenditure and losses are not of a capital nature.

In terms of section 11, the first step of the enquiry is to establish whether the taxpayer was trading for purposes of the Act. Carrying on a trade presupposes a system or plan which discloses a degree of continuity in the operation. The test to be applied to determine whether trading is being carried on is an objective test. This means that if objective factors indicate that the taxpayer is trading then the trade requirement is satisfied.

The difficulty that arises here is that the taxpayer would have closed down its business for the duration of the lockdown and the question then becomes whether the taxpayer ceased to be carrying on a trade during that period.

In order to determine whether the taxpayer was trading one has to consider whether there were objective factors that indicated that, despite the closing down of the business for a considerable period, the taxpayer nevertheless continued carrying on a trade. The phrase "carrying on a trade" is not defined in the Act thus one has to look to how it has been defined in case law.

In SA Bazaars (Pty) Ltd v Commissioner of Inland Revenue 18 SATC 240, the court considered whether a taxpayer who carried on a retail general dealers business continued to trade for purposes of the Act when it closed down its business. In this case, the taxpayer had closed down its business but had continued to maintain its bank account, hold general meetings and prepare its annual account which disclosed that its losses had been carried forward year-on-year since closing down.

While the taxpayer's conduct was aimed at keeping itself alive during the period that it was closed down, this did not mean that it was carrying on a trade. Specifically, the court held that:

"the mere fact that it kept itself alive during that and subsequent periods does not mean that during those periods it was carrying on a trade. It is clear from the stated case that it closed down its business and as long as it kept its business closed it cannot be said to have been carrying on a trade, despite any intention it might have had to resume its trading activities at a future date."

In ITC 777 19 SATC 320, the taxpayer owned property which it had endeavoured to lease out without much hope of success. The question that arose there was whether the taxpayer was carrying on a trade. The argument raised by SARS was that a mere intention to let out the property was itself not sufficient to constitute carrying on a trade. According to SARS, there must have been some actual dealing and the fact that the property had not been leased meant a trade was not being carried on. The court reasoned that had the taxpayer been successful in letting out the property there would be no question that the rental would have been income derived from carrying on a trade. The court held that-

"a mere intention to let property would not amount to the carrying on of a trade but I do not agree that to constitute carrying on trade there had to be an actual letting. It was the intention of the company if possible, to let the property and though its efforts to do so were not sustained or strenuous it did endeavour to let it to and through associated companies. It has been held that in many businesses long intervals of inactivity occur. . . As the company had endeavoured to let the property, I am of opinion that it did carry on trade"

According to the court a long period of inactivity did not negate the carrying on of a trade.

In ITC 1476 52 SATC 141, the court had occasion to consider the objective factors which, if present, would indicate the carrying on of a trade. The court stated that "the appellant incurred no expense for office rent or salaries. There were no travelling or advertising expenses. This is all an indication of no activity at all". The court concluded that the absence of these factors indicated that the taxpayer was totally inactive and thus not carrying on a trade.

In Commissioner for South African Revenue Service v Smith 2002 (6) 621 (SCA), the Supreme Court of Appeal had to consider whether a taxpayer was carrying on the trade of farming when the taxpayer had no reasonable prospects of turning a profit. The court held that to be considered to be carrying on a farming operation, the taxpayer was only required to show that he possessed a genuine intention to carry on farming operations profitably. All considerations that had a bearing on whether a trade is being carried on, including the consideration of a profit, must be taken into account to answer the question.

What emerges from the case law above is that it is not possible to lay down an exhaustive list of activities that must be present in order to determine what constitutes the carrying on of a trade. All factors that have a bearing on the enquiry will be considered. This means that each case will be determined on its own facts.

Returning to our scenario, the taxpayer would have to first prove an intention to carry on trade and secondly, demonstrate the objective factors against which the taxpayer's intention can be tested. Factors such as paying salaries, incurring rental expense and advertising costs will have a bearing on the enquiry. We submit that these factors would, if present, demonstrate that despite having closed down its business for the duration of the lockdown, the taxpayer was not completely inactive.

Although, each case will be determined on its own merits, the circumstances under which businesses would have closed down during the lockdown period are quite unique and may also have a bearing on the enquiry.

Scenario 2: the provision of personal protective equipment

In our second scenario, an employer has been operating during the lockdown and has provided its employees with personal protective equipment, such as masks and hand sanitizers to use whilst at work.

Ordinarily, where an employer provides assets to its employees, it is likely that the employees will also use these assets for their own private use. In the case of masks and sanitizers, employees can also wear these masks at work and at home. The issue that arises is whether the assets that the employer has provided to its employees constitute a taxable benefit in the hands of the employees.

In terms of the Act, the value of fringe benefits, referred to as taxable benefits, received by an employee from his or her employer must be included in the gross income of an employee. The value is the cash equivalent of the fringe benefit, as determined under the provisions of the Seventh Schedule to the Act.

In terms of paragraph 6 of the Seventh Schedule, a taxable benefit arises whenever an employee is granted the right to use any asset by his or her employer for his private or domestic use. Where an employee is granted the right to use the asset over its useful life or a major portion of its useful life, the value of the private or domestic use is equal to the cost of the asset to the employer.

However, in terms of paragraph 6(4)(a) where the private or domestic use of an asset by the employee is incidental to the use of the asset for the purposes of the employer's business, no value is placed on that asset. This means that a taxable benefit does not arise. The determination of whether an asset is used mainly for the business of the employer is determined on the facts of each case.

The nature of the asset and the various ways in which the employee uses the asset, amongst other things, will be relevant in determining whether the asset is used mainly for the business of the employer. There must be a close link between the grant of the right to use the asset and the employee's responsibilities. In this enquiry, what will ordinarily be important are the terms under which the use of the asset is granted.

In our scenario, an argument may be made that the use of personal protective equipment like masks is mainly to enable the employee to perform his job and consequently no value will be placed on the private or domestic use. What is important to note is that only when almost the entire use of the asset is for purposes of the employer's business will the private or domestic use of the asset by the employee be considered to be incidental.

In addition, the employer and and employee could also potentially rely on paragraph 10(2)(c) of the Seventh Schedule to the Act. It states that no value is placed on any service rendered by an employer to his employees at their work place for the better performance of their duties or as a benefit to be enjoyed by them at their place of work. This means that were an employer has rendered a service to its employees at the workplace for the better performance of their duties there is a taxable benefit, to the value of nil. As such, no tax is payable even though there is still a taxable benefit. The argument here could be that the provision of personal protective equipment is a service rendered by the employer to the employees in order to ensure that they can perform their duties during the on-going health crisis.

Another consideration from the employer's perspective is whether the expenditure incurred in order to provide employees with personal protective equipment may also be deductible in terms of section 11 of the Act. As noted above, section 11 of the Act provides for the deduction of expenditure and losses incurred in the production of income, provided the expenditure or loss is not of a capital nature.

The question that will arise in this scenario is whether the expenditure incurred to acquire personal protective equipment for employees can be considered to be expenditure incurred for the purposes of earning an income by the employer.

In Port Elizabeth Electric Tramways Company Ltd v Commissioner for Inland Revenue 8 SATC 13 the court considered this very question and held that in order to answer this question what must be determined is how closely linked the expenditure is to the business operation of the taxpayer. The Court held that "all expenses attached to the performance of a business operation bona fide performed for the purpose of earning income are deductible whether such expenses are necessary for its performance or attached to it by chance or are bona fide incurred for the more efficient performance of such operation provided they are so closely connected with it that they may be regarded as part of the cost of performing it".

In this case, it is submitted that as the use of personal protective equipment is required in order for businesses to be open, one could argue that the expenditure in respect of the provision of personal protective equipment would be expenditure that is necessary for the performance of the employer's business operations.

Comment

Individuals and business who incur expenditure or losses as a result of the COVID-19 pandemic, must ensure that they meet the relevant requirements to claim such expenditure or loss incurred as a deduction for income tax purposes. If a taxpayer is uncertain whether an amount is deductible, they should obtain proper tax advice on the issue or consider applying to SARS for an advanced tax ruling, in particular if the expense in question is significant.

7. SOME POPULAR FAQS ANSWERED

The following FAQs were compiled from various sources, and under no circumstances represent legal advice or even the only possible answer. It merely represents the points of view of those who are considered experts, and is provided for information purposes.

How should issuers convene and conduct shareholders meetings, amidst the spread of COVID-19?

The JSE has issued a further statement addressed to issuers convening and conducting its shareholders meetings, amidst the spread of the Coronavirus.

The JSE reminds issuers, domiciled in South Africa, in accordance with section 63(2) of the Companies Act 71 of 2008 (Companies Act), that unless prohibited by the issuer's memorandum of incorporation:

- a shareholders meeting may be conducted entirely by electronic communication; or
- one or more shareholder, or proxies for shareholders, may participate by electronic communication in all or part of a shareholders meeting that is being held in person.

In order for an issuer to conduct a shareholders meeting, in accordance with section 63(2) of the Companies Act, the electronic communication employed must ordinarily enable all persons participating in that meeting to communicate concurrently with each other without an intermediary and the electronic communication must also enable all persons to participate in the meeting in an effective manner.

Refer to the rest of this detailed answer on page 7 of the Flatten the Curve Source Document

Should the impact of COVID-19 on businesses be disclosed in their annual report, as a material risk?

For some issuers, the spread of the Coronavirus may constitute a material risk to the issuers business and/or industry. Issuers are required to disclose a description of all material risks which are specific to the issuer, its industry and/or its securities in the annual report of the issuer, which may be incorporated via a weblink to the website of the issuer.

Proper consideration must be given to the material risks that face the issuer and generic disclosures must be avoided. Material risks should be grouped together in a coherent manner and material risks considered to be of the most immediate significance should be prominent at the beginning within the material risks disclosure.

MODULE 6: INSOLVENCY CONSEQUENCES

1. CONSEQUENCES OF INSOLVENCY

There are severe consequences for directors, auditors and independent reviewers when dealing with companies who trade under insolvent circumstances – even for accounting officers. It is of the utmost importance that auditors, reviewers, accounting practitioners and their clients understand their reporting duties.

The legislation governing all of these duties for directors and auditors is complex and there are many pitfalls. The practical problem is that we are sitting with lots of requirements and not enough guidance!

⇨ **Directors should be knowledgeable!**

The directors of a company have the responsibility to ensure that a company operates in a responsible manner generally and when its liabilities exceed its assets.

An auditor considers the actions taken by the directors in the circumstances.

An auditor is not responsible for the actions of the directors, and is normally not party to the carrying on of the company's business.

The personal liability of directors is becoming a very emotional and important issue for directors sitting on boards in South Africa. Directors who lack the requisite experience or time to fulfil their fiduciary obligations to companies on whose boards they sit are exposed to increased personal vulnerability.

Directors need to be aware of the circumstances in which they can be held personally liable for the debts of the company or can be charged with a criminal offence. It is incumbent upon directors to ensure that when the warning signs become self-evident, they immediately take the necessary steps. The questions to be considered are whether or not insolvency is in fact a real possibility and what are those steps that should be taken.

2. COMMERCIAL VS FACTUAL INSOLVENCY

Although it is not the norm, it is not uncommon in business for a company's liabilities to exceed its assets.

When liabilities exceed assets, factual insolvency exists. This is also commonly referred to as technical insolvency.

Factual or technical solvency is distinguishable from commercial solvency. Commercial solvency is the ability of an entity to meet its debts as and when these fall due.

The ability of a company to meet its debts as and when these fall due is dependent upon the funds available (and reasonably anticipated to be available) to the company.

To continue operating as a going concern, a company must be commercially solvent. There is thus a link between the factual solvency assessment and commercial solvency, as the asset and liability values may be different if a company is not a going concern.

Factual insolvency = A company is trading whilst factually insolvent, if its total liabilities exceed its total assets.

- For the consideration of factual solvency, assets are normally measured at their fair value (and not only at their carrying value in the financial statements and accounting records) in the ordinary course of business of the company – not in a liquidation or close-down scenario.
- This assessment thus assumes that the company will continue as a going concern in the foreseeable future – which is typically considered as covering the twelve months from the date of the assessment.

Commercial insolvency = not having enough funds available to pay the company's debts in the normal course of business.

- ISA 570 identifies net current liabilities as a condition which may cast doubt about the going concern assumption.
- The funds available to a company include inter alia its bank balances, liquid assets, borrowing facilities and committed funding from related parties (such as a holding company or fellow-subsidiary). Sometimes, the relationship between current assets and current liabilities is considered as a potential indicator of commercial insolvency.

3. YOUR REPORTING OBLIGATIONS

Financial Reporting Framework

If a company is considered not to be a going concern, then the assets should be considered at their realisable amounts, and the measurement of liabilities should include all liabilities that arise in a liquidation or close-down scenario.

- *When the fair value of an asset is different from the carrying value in the financial statements and accounting records, then when taking into account the fair value of that asset in the factual solvency assessment, it is also necessary to take into account the tax consequences that follow from the notional revaluation of the asset (or a revaluation processed in the books of account and financial statements).*

How to Report, When & to Whom?

This will depend on the outcome of your considerations of the various factors in the previous sections:

⇨ If you are performing an audit, and it is a Reportable Irregularity, then you must report to IRBA – in the prescribed format – within the prescribed timeframes stated in Section 45 of the APA (this will include reporting to management)

⇨ If you are performing an independent review, and it is a Reportable Irregularity, then you must report to CIPC – in the prescribed format – within the prescribed timeframes stated in Companies Regulation 29 (this will include reporting to management)

⇨ If you are acting as the accounting officer to a CC, then you should report to CIPC – in the prescribed format – within the prescribed timeframes stated in the Close Corporations Act

⇨ If you are compiling the financial statements, then you should ensure that the relevant facts are reported, e.g. subordination of loans, guarantees, going concern issues, etc. in the notes to the AFS, and maybe in the Directors' Report

⇨ In all of the above scenarios, you might need to report to management as well…

You need to decide what your report should include – by referring to the results of your evaluations.

All instances of NOCLAR must be reported in accordance with your Professional Code of Conduct.

As Auditor

Reporting of Reportable Irregularities to IRBA occurs in line with the ***IRBA Guide on Reportable Irregularities***.

Refer to the Guide for illustrative examples of the letters that must be sent, the timeframes that must be adhered to, and other relevant guidance that relates to your engagement.

This IRBA Guide is available to you as a Source Document

As Independent Reviewer

Steps to alert CIPC about a "Reportable Irregularity":

- An **independent reviewer** of a company that is satisfied or has reason to believe that a reportable irregularity has taken place or is taking place in respect of that company must, without delay, send a written report to the Commission. This is known as the **`first report'**.
- The report must give particulars of the reportable irregularity referred to above and must include such other information and particulars as the independent reviewer considers appropriate.
- The independent reviewer must within three (3) business days of sending the report to the Commission notify the members of the Board of the company in writing of the sending of the sending of the report referred to in regulation 29(6) and the provisions of this regulation. **BUT there is a new notice pertaining to this:**
- ***Although Regulation 29(7) provides that the notification to the board must occur within 3 days of the report to the Commission, the Commission's Notice 7 of 2016 requires a copy of the letter to the board to be sent to the Commission with the first report***
- So - The First report of the reportable irregularities (RI's) from the Independent Reviewer to CIPC must include the letter which was sent to the board of directors notifying them of the reportable irregularity.
- The independent reviewer must as soon as reasonably possible but not later than 20 business days from the date on which the report referred in regulation 29(6) (the first report) was sent to the Commission-

1. Take all reasonable measures to discuss the first report with the members of the board of the company;
2. Afford the members of the board of the company an opportunity to make representations in respect of the report; and
3. **A Second Report** must be sent by the Independent Reviewer to the Commission within twenty (20) business days from the date of the First report. The second report must include the independent reviewer's opinion as to whether:
    - no reportable irregularity has taken place or is taking place; or
    - the suspected reportable irregularity is no longer taking place and that adequate steps have been taken for the prevention or recovery of any loss as a result thereof, if relevant; or
    - the reportable irregularity is continuing; and the detailed particulars and information supporting his conclusions.

- If the second report from the independent reviewer states that the reportable irregularity is continuing, the Commission must notify the appropriate regulator in writing and provide a copy of the reportable irregularity to them. **The Commission may investigate any alleged contravention of the Act.**
- Independent Review reports must be e-mailed to: independentreview@cipc.co.za

Lettie Janse van Vuuren has already presented a webinar on *Reporting on Insolvencies* on 27 February 2020

You can purchase and access the webinar recording via www.accountingacademy.co.za

MODULE 7: DIRECTORS' LIABILITY

1. DIRECTORS' FIDUCIARY DUTIES

Company employers must consider their duty to act in the best interests of the company when sending employees home with a promise of payment where there is a risk of jeopardizing the continued operation of the company and rendering it insolvent.

Accordingly, directors should be cautious in complying with their fiduciary duties.

2. CONSIDERING DIRECTORS' LIABILITY IN FINANCIALLY DISTRESSED TIMES

Media article – 7 April 2020

Beyond the balance sheet: Considering directors' liability in financially distressed times

In the midst of the global concern of COVID-19 and the impact it has had, and continues to have, on the health and wellbeing of the population, a further concern is that of the effect the COVID-19 pandemic has had and shall have on businesses and the greater economy not only in South Africa, but worldwide.

Since President Cyril Ramaphosa's announcement of a national 21-day lockdown and the declaration of a national state of disaster, many businesses have found themselves in very uncertain times. One can only imagine the difficulties faced by directors and business officeholders during this period, as they endeavour to navigate their businesses and companies through these unprecedented times, finding themselves in very unfamiliar territory.

In advising businesses and companies in navigating through these unchartered waters, a starting point would be to try and manage the unavoidable in order to avoid the unmanageable - this was a quote by *New York Times* columnist, Tom Friedman. During this so-called Black Swan event, it is inevitable that many businesses will start to experience the effects in more ways than one, be it employee related issues, financial issues or market related issues.

It is unsurprising to hear that many businesses have already or may begin to experience financial distress during this time. While many of us obsess over our own health and symptoms over the next couple of weeks, as a director of company, it is equally as important to keep a finger on the pulse of the business during this time, so as to allow for swift and cautious action should the business start showing 'symptoms' of financial distress.

In identifying financial distress, the board and its directors would have to determine whether or not the company will be able to pay its debts as they fall due and payable within the immediately ensuing six months; or whether it appears to be reasonably likely that the company will become insolvent within the immediately ensuing six months.

These two factors would need to be carefully considered on a rational basis and technically speaking, one would have to consider if the company's liabilities exceeds its assets; or if there are any realisable assets that can be realised in order to satisfy the company's liabilities in the immediately ensuing six months.

Determining financial distress has far greater consequences for a director than a simple balance sheet consideration. In terms of section 129(7) of the Companies Act 71 of 2008 (the Act), there is an onerous obligation placed on a board of directors of a company wherein if the board determines that a business is in fact in financial distress, they are to either adopt a resolution to commence with business rescue proceedings, alternatively, deliver a written notice to each of its creditors, employees, trade unions and shareholders, setting out, inter alia, its reasons for not voluntarily commencing business rescue proceedings.

Failure to adhere to provisions as set out in the Act could result in a director being held personally liable for all the debts of a company. Section 77 of the Act speaks to this personal liability and explains that where a director knowingly carried on the business of the company recklessly or with the intent to defraud creditors or other stakeholders,

he/she shall be held personally liable for any loss incurred by the company. Section 214 goes even further to provide for criminal liability for those directors at the steer of a company which is being traded recklessly.

In considering the above, one may surrender to the fact that in order to avoid personal liability in times of financial distress, a director is left with no choice but to either adopt a resolution for the commencement of business rescue or send a notice to all stakeholders, leaving the company in a worse off position and seemingly not acting in its bests interests.

However, in considering a directors' freedom to exercise his/her fiduciary duties, the courts consider these instances on a case by case basis, and the enquiry is predominantly evidentiary based.

One of the main reasons that a director may elect not to send out a notice as provided for in section 129(7) (in the alternative to placing the company in business rescue), is for the sole reason of such notice seeming more like a 'death notice'. This is because more often than not, the creditors may respond to such notice by applying to court for the company to be liquidated, as the notice contains an admission by the company of its commercial insolvency.

Therefore, should a director elect not to adhere to the provisions provided for in section 129(7) insofar as they believe that they would be acting in the best interests of the company, he/she would have to be able to prove that they acted honestly and in a reasonable manner in conducting business while the business was seemingly in financial distress.

The defence provided for in section 77(9) of the Act is not unique to South Africa and is considered internationally as well. Commonly referred to as the Business Judgement Rule, the rule seeks to protect and promote the ability of directors to fully exercise their duties in the best interests of the company, without fear of personal liability arising from such decisions where such director acted honestly and reasonably.

Section 22 of the Act has also provided for the Companies and Intellectual Property Commission's (CIPC) intervention, where the CIPC has the authority to issue notices where it reasonably believes that a company has been trading or carrying on business in a reckless, grossly negligent and fraudulent manner. However, in light of the COVID-19 pandemic and the state of national disaster in which South Africa finds itself, the CIPC has issued a practice note in terms whereof it acceded to not invoke its powers in terms of this section where a company is temporarily insolvent and still carrying on business or trading. This accession shall only be applicable insofar as the CIPC has reason to believe that the insolvency is due to the business conditions which were caused by the COVID-19 pandemic and shall only apply until such time that 60 days has lapsed after the declaration of a national disaster in South Africa has been lifted.

In considering the above, should your company run into financial difficulties during this time, while it is understandable to not readily concede that there may be problems, it would be unwise not to seek guidance in navigating through these uncertain times.

All directors should be asking themselves the following two important questions:

- Is it reasonably unlikely that the company will be able to settle all its debts as they become due and payable in the ensuing six months?
- Or, is it reasonably likely that the company will become insolvent within the immediately ensuing six months?
- If the answer is yes to either of the above questions, we suggest that you make contact with us as soon as possible.

There are many consultants to guide entities through the steps to be taken during early signs of financial distress and to identify various mechanisms available to companies to restructure such potential distressed financial affairs.

Directors should take note that if they endeavour to take such pro-active steps to mitigate the distress, such would stand in good stead when considering as to whether or not the directors acted in a manner that was expected of them in the circumstances.

MODULE 8: LEGAL REFERENCES, USEFUL RESOURCES & LINKS

1. ALERT LEVEL 3 LOCKDOWN REGULATIONS

Click here to download the 24-page Level 3 Lockdown Regulations:

https://mcusercontent.com/7af202f977bc5dbad675398d7/files/69532e34-9058-4e33-bae6-686b841733e9/FINAL_REGULATIONS_compressed.01.pdf

2. ACTS ONLINE

https://www.acts.co.za/corona_virus_covid-19_updates

Acts Online have joined forces with:

- Accounting Weekly;
- Business Unite;
- SA Accounting Academy;
- SA United Employers;
- South African Institute for Business Accountants (SAIBA);
- Tax Faculty and;
- The South African Institute of Tax Professionals (SAIT);

We are preparing technical alerts and webinars at no charge to all our stakeholders as soon as information is released. Subscribe for notifications to stay updated on the technical alerts and webinars.

Table of contents

Notifications:

Free Webinars	View
Flowcharts	View
Subscribe for notifications	View

Legislation:

Disaster Management Act, 2002 (Act No. 57 of 2002)	View
Compensation for Occupational Injuries and Diseases Act, 1993 (Act No. 130 of 1993)	View
Competition Act, 1998 (Act No. 89 of 1998)	View

Free Webinars:

Title	View / Register	Availability
Practical Issues and Guidance on its Implementation (Tax Faculty)	View	Recording available
Financial Relief through TERS or UIF (SAUEO)	View	Recording available
2020 Tax Relief Measures during Covid-19: Supporting Liquidity through grants and government aid (Tax Faculty)	View	Recording available
COVID-19 – Ensuring the Health & Safety of your Staff (SAUEO)	View	Recording available
Keeping your Business Afloat through Lockdown (SAUEO)	View	Recording available
Employer and Employee, PAYE and UIF Specific (Tax Faculty)	View	Recording available
Microsoft Teams – Enabling your Remote Workforce (Tangent Solutions)	View	Recording available
The employer and the employee – Practical application (Tax Faculty)	View	Recording available
Consumer markets (Tax Faculty)	Register now	Available 14 April 2020
COVID-19 and the large corporate (Tax Faculty)	Register now	Available 16 April 2020
Life after COVID-19 / Understanding the economic impact (Tax Faculty)	Register now	Available 20 April 2020

Free Webinars Series:

Title	View / Register	Availability
Mental health and well-being in covid-19 (Building psychological strength and emotional resilience)	View	Recordings available

Flowcharts:

COVID 19 - TERS vs UIF claims explained	View
COVID 19 - SMME debt relief finance scheme	View
COVID 19 - Tax measures provisional tax for businesses	View
COVID 19 - Tax measures ETI	View
COVID 19 - Tax measures PAYE	View

3. SAAA EMPLOYER TOOLKITS

SAAA is making 3 user-friendly toolkits available to you.

Simply go to SAAA's Online Shop to purchase the software & tools you need to comply with the relevant regulations as a result of COVID-19, by clicking on the following link.

https://accountingacademy.co.za/store/search/2

Below is some more details on each of the 3 toolkits:

Post-lockdown labour plan and toolkit

@ R595

As you resume business, you may have to review your post-lockdown workforce and contractual obligations, as you may be able to implement measures such as temporary suspension of your common law and other contractual legal obligations to provide work to, or to remunerate your employees.

These relief measures are limited to the period of the national lockdown only and as soon as the lockdown is lifted, the usual contractual obligations must immediately be reinstated.

This comprehensive toolkit consists of expert guidelines to help you compile and tailor your specific plan, as well as 26 templates to deal with the various labour eventualities that could arise from restructuring your workforce.

The templates include:

Normal Operations

- Communication with employees
- Refusal to work – Individual
- Refusal to work – Group
- Self quarantine
- Sick Leave
- Annual Leave
- Abscondment
- Working from home

Operational Requirements

- Retrenchments (Dismissals)
- Short time
- Lay-off
- Training Lay-off Scheme

Other alternatives

- Changes to Conditions of Employment
- Annual Increases & Bonuses
- Shift pattern changes
- Averaging of working hours
- Fund contribution holidays
- Transfers / Secondments
- Communication guidelines

COVID-19 occupational health and safety management toolkit

@ R595

As set out by the law, there are basic COVID-19 workplace requirements that every South African employer that is operational, must currently adhere to. Non-compliance with these regulations, includes fines of up to R100,000 and imprisonment of up to two years. This toolkit will help you or the person you appoint to take charge of safety, to address all the relevant requirements, which can be summarised as follows:

Ongoing COVID-19 risk assessments

- A COVID-19 workplace plan
- A plan that outlines the details of the phased return of workers
- COVID-19 awareness training material and initiatives
- Daily COVID-19 screening
- COVID-19 health and safety practices and measures
- Daily use of COVID-19 personal protection equipment (PPE)

This toolkit provides for all the elements above, but for assistance to comply with any other, industry-specific regulations, or onsite risk assessments.

Haibo Coronavirus© Wall Poster Series

@ R455

With none of the technical jargon needed for your safety execs, the Haibo Coronavirus© series was purposefully designed to provide you with super-easy-to-understand and graphically illustrated posters for your workplace, so you can keep COVID-19 safety in the faces of your people (and others who visit) practise these daily.

These posters also make it quick and easy for your safety officers to conduct toolbox talks in the morning, as it provides them with a snapshot summary that covers all the key information of the four key areas.

COVID-19 Wall Posters:

- The COVID-19 basics
- Identify and minimise onsite COVID-19 risks
- Simple ways to reduce onsite spread of the coronavirus
- How to conduct COVID-19 safe meetings

Each poster is available in three key South African languages: English, Sotho and Zulu (so you get a total of 12 posters), and were purposefully designed so you can print it on any printer, and in any size ranging from A4 to A1. Or, you can distribute it electronically, considering you are also responsible for the safety of your remote workforce.

4. WEBSITES WITH COVID-19 INFORMATION

There are numerous websites and webpages available with all aspects that relate to COVID-19.

Here are a few that we regard as very useful:

IRBA COVID-19 Webpage

IRBA has issued various documents with regards to COVID-19 and its impact on auditors and audit work.

The purpose of this webpage is to create a central resource of available guidance on the implication of COVID-19 relating to audits of financial statements.

Links to related communication:

- ⓘ IRBA Newsletter: 20 March 2020: IMPLICATIONS OF THE COVID-19 OUTBREAK ON AUDITS AND AUDITORS
- IRBA Communique: 20 March 2020: IMPLICATIONS OF THE COVID-19 OUTBREAK ON AUDITS AND AUDITORS
- IRBA Communique: 23 March 2020: IRBA response to COVID- 19 and Alignment to State of National Disaster Declared by the President
- IRBA Communique: 26 March 2020: Implications of the COVID-19 outbreak on audits, audit firms and regulatory requirements
- IRBA Communique: 1 April 2020: Response to Accountants and Auditors wanting their services to be designated as essential
- IRBA Communique: 3 April 2020: General Extension on Financial Reporting Periods
- ⓘ IRBA Newsletter: 16 April 2020: The Impact of COVID-19 on the Auditor's Report: Going Concern
- IRBA Communique: 16 April 2020: THE IMPACT OF COVID-19 ON THE AUDITOR'S REPORT: GOING CONCERN
- IRBA Communique: 21 April 2020: COVID-19: HIGH-QUALITY AUDITS AND ITS IMPLICATIONS FOR REPORTING DEADLINES
- IRBA Communique: 23 April 2020: COVID-19 and Its Impact on File Assembly (Archiving)
- Terms of Reference: COVID-19 Task Force
- IRBA Communique: 18 May 2020: IRBA draws attention to the Key Audit Matters in auditor's reports as it relates to COVID-19
- IRBA Communique: 20 May 2020: IRBA lifts the suspension on the submission of second Reportable Irregularities reports
- IRBA Communique: 22 May 2020: IMPACT ON AUDITS DUE TO COVID-19: RELATED PUBLICATIONS
- IRBA Communique: 25 May 2020: DIFFERENT INTERPRETATIONS OF PERMITTED SERVICES UNDER ALERT LEVEL 4 LOCKDOWN REGULATIONS

SAICA COVID-19 Hub

SAICA has issued various documents with regards to COVID-19 and its impact on accountants and businesses.

You can access the SAICA COVID-19 Hub by clicking on the following link:

https://www.accountancysa.org.za/covid-19/

SAICA Educational Material re COVID-19 Fin Reporting

https://www.accountancysa.org.za/covid-19/saica-resources/covid-19-ifrs/

SAICA has compiled and issued educational material on 13 Financial Reporting topics that require special consideration as a result of COVID-19 uncertainties. This is applicable to entities with December 2019, January, February and March 2020 year ends.

These **13 educational modules** provide guidance on various IAS applications and accounting implications, sets out lists of considerations to take into account in performing assessments during COVID-19, identifies best practice questions, etc.

Some of the IFRS/IAS topics that are specifically addressed are: Going concern, Events after the reporting period, contingencies, revenue, inventories, financial instruments, judgements and estimation uncertainty.

The webpage includes both local and international information related to the implications of COVID-19 on the accounting profession, preparers and users.

Click here to access the Educational Material:

https://www.accountancysa.org.za/covid-19/saica-resources/covid-19-ifrs/

The following 2 specific sets have already been downloaded for your convenience:

- **COVID-19: SAICA Educational Material 1- Events After the Reporting Period**

This material provides guidance on IAS 10 application and is relevant to December 2019 to March 2020 reporting periods.

- **COVID-19: SAICA Educational Material 2 - Going Concern**

This material sets out a list of considerations to take into account in performing the going concern assessment during COVID-19.

Department of Health

Get the latest information about COVID-19 from the South Africa Resource Portal

http://www.sacoronavirus.co.za/

The amended OHS regulations also provide links to various **Department of Health** guidelines that can assist employers in dealing with Covid-19 in the workplace, in Annexure A thereof.

- **Guidance on vulnerable employees and workplace accommodation in relation to COVID -19 (V4: 25 May 2020)**

  http://www.nioh.ac.za/wp-content/uploads/2020/05/20_2020-V4.-Guidance-on-vulnerable-employees-and-workplace accommodation....pdf

- **Guidance note for workplaces in the event of identification of a COV1D-19 positive employee**

  http://www.nioh.ac.za/wp-content/uploads/2020/05/guidelines_positive_worker_19_May_20.pdf

- **Clinical management of suspected or confirmed COVID -19 disease Version 4 (18th May 2020)**

  https://www.nicd.ac.za/wp-content/uploads/2020/05/Clinical-management-of-suspected-or-confirmed-COVID-19- Version-4.pdf

- **Guidelines for symptom monitoring and management of essential workers for COVID -19 related infection**

  http://lwww.nioh.ac.za/wp-content/uploads/2020/05/guideline_positive_worker_19_May_20.pdf

- **How to use mask cloth**

  http://www.health.gov.za/index.php/component/phocadownload/category/631#

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