



The Contemporary Gazette

relevant new legislation for your business



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This Update

This newsletter overviews new relevant National laws up to **17th February 2020**.

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General

1. NOTABLE ONE LINERS

Air Traffic and Navigation Services Company Act

The Economic Regulation of Transport Bill proposes [amending the Act](#).

Airports Company Act

The Economic Regulation of Transport Bill proposes [amending the Act](#).

Commissions Act

The [offences and penalties](#) segment of the [Judicial Commission of Inquiry into allegations of state capture, corruption and fraud in the Public Sector including Organs of State](#) has been amended.

Competition Act

Draft guidelines for competition in the South Africa Automotive Aftermarket Industry gazetted (bundled sale of motor vehicles with value added products; lack of access to technical information by independent service providers (ISPs); lack of access to original equipment manufacturer(OEM)-training for ISPs; exclusion or foreclosure of ISPs relating to services to insured vehicles or vehicles under warranty; promoting entry and participation in dealership market and preventing anti-competitive information sharing; promoting inclusive and fair allocation of repair work by insurers; and exclusion or foreclosure of distributors of non-original spare parts, components, tools and equipment from distributing parts competing with the OEM's brand in-warranty.

Comment deadline 16 March 2020.

Note: Although [section 79](#) guidelines are not binding on the Competition Commission, Tribunal or Appeal Court, section 79 states that any person interpreting or applying the [Competition Act](#) must take [relevant guidelines](#) into account.

Criminal Law (S Offences and Related Matters) Amendment Act

The regulations relating to s offences courts commenced 7 February 2020.

Electronic Communications Act

Draft limitations of control and equity ownership by historically disadvantaged groups (application of 30% of HDG equity requirements, application of B-BBEE requirement on licences, transfer of control or ownership, indirect ownership interest, and application of the ICT sector code) have been gazetted. Comment deadline 3 April 2020.

Economic Regulation of Transport Bill

The bill proposes, amongst others, a regulator that may conduct market inquiries and determine price control, and exercise economic regulation, of transport facilities and services, as well as specific provision for access to rail infrastructure measures.

Long-term Insurance Act

A person who fails to furnish the Authority with a return, information or document, as provided by this Act, within the specified period or the period determined by the Authority by notice on the official web site, or any extension thereof, shall, as from 12 February 2020 and irrespective of any criminal proceedings instituted against the person under this Act, be liable to a penalty not exceeding R6 500 for every day during which the failure continues, unless the Authority, on good cause shown, waives the penalty or any part thereof.

Magistrates Courts Act

The rules relating to summary judgment (rule 14), costs (rule 33) and forms (annexure 1) will be amended on 9 March 2020.

Medical Schemes Act

The medical scheme levy for the 2020/21 levy year has been proposed (R42.54 per principal member per year).

National Environmental Management Integrated Coastal Management Act

Section 11 (ownership of coastal property) commenced on 7 February 2020 and provides that: The ownership of **coastal public property** vests in the citizens of the Republic and coastal public property must be held in trust by the State on behalf of the citizens of the Republic; and Coastal public property is inalienable and cannot be sold, attached or acquired by prescription and rights over it cannot be acquired by prescription.

*Note: **Section 9** (acquisition of private land by State) provides that: The Minister, acting with the concurrence of the Minister of Land Affairs, may acquire private land for the purpose of declaring that land as coastal public property, by purchasing the land; exchanging the land for other land; or if no agreement is reached with the owner, by expropriating the land in accordance with the **Expropriation Act**.*

*Further note: Land may be acquired in terms of **section 9** only if it is being expropriated for a purpose set out in **section 8(1)** (extensions).*

*Final note: Also consider coastal public property **purpose, state infrastructure reclamation, other reclamations, State trustee, access, high-water mark, and erosion and accretion**.*

National Land Transport Act

The Economic Regulation of Transport Bill proposes a Transport Economic Regulator should oversee the **fares charged for public transport services throughout the country**.

National Ports Act

The Economic Regulation of Transport Bill 2020 proposes, **amongst others**, that the Transport Economic Regulator will be the Regulator under this Act, and that such Regulator must approve price control, must receive certain licensed operators information, and may determine the complaint and appeal procedures.

National Research Foundation Act

The Amendment Act 2018 commences on 1 April 2020 and will, **amongst others**, **expect** the Foundation to advance research and human capital development (through funding and necessary **research** infrastructure to facilitate the creation of knowledge, innovation and development in all fields of **science** and **technology**); let the Minister determine **policies** for research and funding to be implemented by the Foundation; allow **research outside SA** for any government or administration or other person subject to legislation and other

formal agreements regarding international cooperation; and allow (subject to any conditions imposed) any researcher or research institution to apply to use a national research facility for [research](#) or instruction.

Examples of related laws: [Intellectual Property Rights from Publicly Financed Research and Development Act](#) (see [section 19](#) intellectual property rights from study or research funded or undertaken by the Foundation).

[Petroleum Products Act](#)

The South African Biofuels Regulatory Framework is available from the Department of Mineral Resources and Energy.

[Short-term Insurance Act](#)

A person who fails to furnish the Authority with a return, information or document, as provided by this Act, within a specified period or the period determined by the Authority by notice on the official web site, or any extension thereof, shall, as from 12 February 2020 and irrespective of any criminal proceedings instituted against the person under this Act, be liable to a penalty not exceeding [R6 500 for every day](#) during which the failure continues, unless the Authority, on good cause shown, waives the penalty or any part thereof.

[Skills Development Act](#)

(i) Joint Communique 1 of 2016 (registration of private education and training providers offering qualifications and part-qualifications on the occupational qualifications framework) has been revoked - this means, [amongst others](#), that skills development providers are no longer required to lodge applications for registration as private colleges or private higher education institutions.

(ii) An [administrator for the Construction Education and Training Authority](#) has been appointed until 20 February 2021.

[South African National Roads Agency Limited and National Roads Act](#)

The Economic Regulation of Transport Bill proposes that a Transport Economic Regulator should [determine amount of toll, rebates, increases and reductions](#), and may periodically review the level of tolls charged.

Special Investigating Units and Special Tribunals Act

Investigation launched into the [affairs of the masters offices and the office of the chief master](#) (1 January 2014 to 4 February 2020) relating to the administration of estates of deceased persons; the winding up of estates of insolvent persons; the protection and administration of the funds of minors, contractually incapacitated and undetermined and absent heirs, which have been paid into the Guardian's Fund; the supervision of the administration of companies and close corporations in liquidation; the safeguarding of all documentary material in respect of estates, insolvencies and liquidations; the processing of enquiries by executors, attorneys, beneficiaries and other interested parties; and the appointment of executors, trustees, curators, liquidators, officials and employees.

Note: Also see [Guardians Fund components of the KwaZulu-Natal and Gauteng offices of the Master of the High Court](#).

Further Note: You may also wish to revisit the collections of investigated [education and training authorities](#), [entities](#), [municipalities](#), [provincial departments](#), [national departments](#), and [SETAs](#).

State Attorney Act

From 7 February 2020, the Amendment Act 2014, [amongst others](#), allows the Minister to determine policy for the offices of State Attorney; the management of litigation involving the State; the briefing of advocates; the outsourcing of legal work; initiating, defending and opposing of matters; and implementing alternative dispute resolution mechanisms.

Unemployment Insurance Act

The definition of [identity document](#), contained in the [regulations](#), has been amended.

Reminder: [Regulation 2](#) requires proof of identity before benefit applications may be considered - No claim for benefits may be processed and no benefits may be paid, unless the applicant has produced an identity document.



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Financial

2. AUDITING PROFESSION ACT: AMENDMENT BILL 2020

The Amendment Bill 2020 proposes, [amongst others](#), that:

- (i) An individual may only be [registered](#) with the Regulatory Board if a member of an accredited professional body;
- (ii) If an individual registered auditor has [reported an irregularity](#) to the Regulatory Board the individual registered auditor may not be removed (and the entity may not remove the registered auditor, until [section 45\(3\)](#) report discussions and follow-up reporting is complied with);
- (iii) The [enforcement committee](#) may, if considered appropriate, [refer a non-audit matter](#) brought against a registered auditor to the relevant accredited professional body for investigation and disciplinary proceedings;
- (iv) The [section 48\(5\)](#) obligation to produce any information may not be excused by reason of any alleged confidential information of a client contained therein - however:
 - A person issued with a subpoena may not, without just cause, fail to provide the information, working paper, statement, correspondence, book or other document specified in the subpoena, in his or her possession or custody or control which he or she has been required to produce; and
 - The law relating to privilege, as applicable to a witness subpoenaed to provide a book, document or object in a civil trial before a court applies, with the necessary changes, in relation to the production of any object or information to the investigating committee;
- (v) The investigating committee be given [powers to enter and search premises](#) - also see the proposed [warrants](#) section;

Note: Both sections will [apply to candidate registered auditors](#).

- (vi) Revising [disciplinary hearings](#), including that if the improper conduct with which the registered auditor is charged amounts to an offence of which he or she has been convicted by a court of law, a certified copy of the record of his or her trial and conviction by that court is, on the identification of the registered

auditor as the person referred to in the record, sufficient proof of the commission by him or her of that offence, unless the conviction has been set aside by a superior court - also see [offences](#);

(vii) Revising [admissions of guilt sanctions](#), and adding [sanctions in disciplinary hearing process](#);

(viii) Introducing [disclosure of information](#) and [protection of personal information provisions](#); and

(ix) [Transitional measures](#) for a charge of improper conduct before the commencement of the future amendment law, or for an act of improper conduct that was not charged before the commencement of the future amendment law.

Bill 2 of 2020 (Incorporated into the [Auditing Profession Act](#) and [Regulations](#))



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General

3. COMPETITION ACT: BUYER POWER AND PRICE DISCRIMINATION

Amendment Act 2018

The following sections of the [Competition Act](#) were amended by the Competition Amendment Act, 18 of 2018 from 13 February 2020:

- (i) [Section 8\(4\)](#) (abuse of dominance prohibited - prohibitions on dominant firms relating to imposing unfair terms or avoiding purchases from certain entities to circumvent the prohibition on unfair terms;

Note: Also consider [section 59](#) (Tribunal administrative penalties).

Further Note: The enforceability of the second prohibition may be tested in due course in terms of actual application, and possibly in terms of regulatory principles such as freedom to contract and questions regarding forcing an entity to purchase from another within a [Constitutional environment](#) and a competition-friendly environment.

- (ii) [Section 9](#) (price discrimination by dominant firm as seller prohibited);

Note: Also consider [section 59](#) (Tribunal administrative penalties).

- (iii) [Section 44](#) (right of informants to claim confidentiality - including a provision that an appropriate determination concerning access to [confidential information](#) includes the disclosure of the information to the legal representatives and economic advisors of the person seeking access in a manner determined by the circumstances, and subject to the provision of appropriate confidentiality undertakings.

Note: The exception referenced is that this will not apply if the Competition Commission, Competition Tribunal or Competition Appeal Court holds otherwise - no mention is made of if and when a court of law holds otherwise. Also consider [restricted use of information](#).

- (iv) [Section 45](#) (disclosure of information) - including stating that:

- the Minister may have access to a firm's [confidential information](#), which information may only be used for the [purposes](#) of this Act unless required to be disclosed in terms of any other law or the Minister has reasonable grounds to believe the information discloses a potential criminal offence;
- any other relevant Minister and any relevant regulatory authority may have access to a firm's confidential information unless the Tribunal determines otherwise otherwise, which information may only be used for the purposes of this Act unless required to be disclosed in terms of any other law or the Minister has reasonable grounds to believe the information discloses a potential criminal offence; and
- once a final determination has been made concerning any information, it is confidential only to the extent that it has been accepted to be [confidential information](#) by the Competition Tribunal or the Competition Appeal Court.

Note: No mention is made of if and when a court of law holds otherwise. Also consider [restricted use of information](#).

Buyer power

The [buyer power regulations](#) provide that the factors that must be considered in the establishment of a contravention to [section 8\(4\)\(a\)](#) include whether:

- (i) The buyer operates within the [grocery wholesale and retail sector](#); the [agro-processing sector](#); or the [ecommerce and online services sector](#);
- (ii) The buyer is [dominant](#);
- (iii) The supplier falls within the designated class of suppliers namely:
 - Small business or medium-sized business as defined in [section 1](#) of the Act or any [regulations](#) made by the Minister; or
 - A firm controlled or owned by historically disadvantaged persons within the [meaning of the Act](#) and within the [regulation benchmarks](#);
 - The price or trading condition is required from or imposed on the supplier by the buyer; or
 - The [price is unfair](#) or the [trading condition is unfair](#).

Note: Laws such as the [BBBEE Act](#) and [Competition Act](#) change almost every year, and bear little resemblance to their original intent, so that those outside the mentioned sectors should also monitor the ongoing progression of these regulations - also, the lesson from most SA regulatory thresholds is that they tend to change often.

Further note: Implicit trading conditions are often required by other laws - such other laws will have to be considered as well, and the weighing up of conflicts between such laws and these proposals may add another level of regulatory complexity.

Further Note: The [Consumer Protection Act list of terms](#), which to some extent amounts to a consolidation of common law, may be useful to consider in contractual arrangements even where the [Consumer Protection Act](#) or [Competition Act](#) does not necessarily apply.

Final note: The concern with the [potential guidelines](#) is that [Commission guidelines](#) are not binding, and yet any person interpreting or applying the Act must take the guideline into account.

Price discrimination

The [price discrimination regulations](#) provide that the factors that should each be considered in the establishment of a price discrimination contravention, includes:

- (i) The selling firm must be [dominant](#);
- (ii) There is different treatment between the purchaser in the designated class of purchaser and other purchasers outside that class of the form of [section 9\(1\)\(c\)](#) discrimination in respect of [section 9\(1\)\(b\)](#) equivalent transactions for goods or services of like grade and quality, that:
 - does not make reasonable allowance for differences in the cost or likely cost of supplying the good or service based on [section 9\(2\)\(a\)\(i\)](#) or (ii) differing places or methods of supply;
 - does not constitute a [section 9\(2\)\(b\)](#) act of good faith to meet a competitor's price; or
 - is not a [section 9\(2\)\(c\)](#) legitimate response to changes in market conditions; and
- (iii) The differential treatment in price relative to other purchasers is likely to [impede the effective participation](#) of a firm or firms in the designated class of purchasers.

Note: The regulations define [designated class of purchaser](#) as a small business or medium-sized business as defined in [section 1](#) of the Act or any [regulations](#) made by the Minister, or alternatively a firm controlled or owned by historically disadvantaged persons within the [meaning of the Act](#) and within the [regulation benchmarks](#).

Further note: An ongoing lesson from regulatory thresholds is that they tend to change often.

Final note: The concern with the [potential guidelines](#) is that [Commission guidelines](#) are not binding, and yet any person interpreting or applying the Act must take the guideline into account.

Proc 10, GN168 and GN169 GG43018 / 13 February 2020 (Incorporated into the [Competition Act and Regulations](#))



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Safety

4. FOODSTUFFS, COSMETICS AND DISINFECTANTS ACT: MAXIMUM PESTICIDE RESIDUES

Offence to sell, manufacture or import foodstuff containing pesticide residue above prescribed limits

Subject to certain exceptions in [section 2](#) and certain [special defences](#), it is an offence to sell, manufacture or import for sale a foodstuff that contains a particular substance or has been treated with a substance containing a particular substance in a greater measure than that permitted by regulation.

Amendments to maximum residue limit

From 10 February 2020:

- (i) Berries group, brassica vegetables or cruciferae, citrus group, cucurbits group, leafy vegetables, leguminous beans group, onion bulb group, pepper group, root and tuber vegetables group, stone fruits, and tree nuts has been defined in relation to [regulated pesticide residues](#).
- (ii) Amendments have been made to the maximum pesticide [residue limits](#), including removing references to several prohibited substances.

Related law

Note that the Foodstuffs, Cosmetics and Disinfectants Act [infants and young children regulations](#) provides that any foodstuff for infants or young children shall be prepared under good manufacturing and good hygiene practices as stipulated by Codex Standards and other relevant regulations under the Act so that:

- residues of those pesticides which may be required in the production, storage or processing of the raw materials or the finished food ingredient do not remain in the foodstuff; or
- if unavoidable, contaminants are reduced to the concentration below that established as maximum standard for that contaminant.

Maximum limits of pesticide residue

1. A person may not sell or manufacture for sale a foodstuff that exceeds the [maximum residue limit](#) (where the foodstuff is not imported, is [listed](#) and contains a [listed](#) chemical substance).
2. A person may not sell or manufacture for sale a foodstuff that exceeds a maximum residue limit of 0,01 mg/kg (where the foodstuff is not imported, is [listed](#) and contains a chemical substance that is not [listed](#)).
3. A person may not sell or manufacture for sale a foodstuff that exceeds a maximum residue limit of 0,01 mg/kg (where the foodstuff is not imported, is not [listed](#) and contains a [listed](#) chemical substance).
4. A person may not import a foodstuff that appears in the latest list of the Codex Maximum Limits for Pesticide Residues of the Codex Alimentarius Commission (Joint Food and Agricultural Organization/World Health Organization Food Standards Programme) or in the Directives of the European Community if such foodstuff exceeds the maximum residue limits for any chemical substance for such foodstuff, specified in any of those publications, or the highest of the maximum residue limits specified in both publications.
5. A person may not import a foodstuff that exceeds a maximum residue limit of 0,01 mg/kg (where that foodstuff contains a chemical substance that is not listed in the above publications or in the [Annex](#)).
6. A person may not sell or manufacture for sale a foodstuff that exceeds a maximum residue limit of 0,01 mg/kg (where that foodstuff is imported, is not listed in the above publications or in the [Annex](#) and contains a chemical substance that is not [listed](#)).

The regulation also provides an [explanation of metabolite and pesticide residue limit](#) and the manner in which [standards will be set](#) for analysis and sampling.

GN119 GG43008 / 10 February 2020 (Incorporated into the [Foodstuffs, Cosmetics and Disinfectants Act and Regulations](#))



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