

# *The Contemporary Gazette*

*relevant new legislation for your business*



## Legal Update Volume 16 Issue 14, 16 August 2021

### This Update

This newsletter overviews new relevant National laws up to **13<sup>th</sup> August 2021**.

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## General

### 1. NOTABLE ONE LINERS

#### Agricultural Pests Act (Control measures)

The [polyphagous shot hole borer control measures](#) provide for notification, phytosanitary, destruction, and management duties for a user of land that may contain polyphagous shot hole borers; as well as for prohibitions relating to listed plants, and exemptions.

*Note: Listed plants relate to avocado, apricot, grapevine, guava, lemon, macadamia, orange, peach, and pecan nut plants.*

*Further note: User of land here refers to an owner of land, and includes: a person who has a personal or real right in respect of land in his capacity of fiduciary, fideicommissary, holder of a servitude, possessor, lessee or occupier, irrespective of whether he resides thereon; a person who has the right to cut trees or wood on land or to remove trees, wood or organic material from land; a person who has the right to remove sand, soil, clay, stone or gravel from land; and a person who carries on prospecting or mining activities on land.*

*Final note: The Minister may where deemed appropriate issue or amend this control measures including the inclusion of any additional reproductive or non-productive host plants as more research is conducted and published.*

#### Agricultural Pests Act (Plant Health Phytosanitary Bill)

The bill proposes repealing [section 3\(1\)](#) importation of controlled goods, to the extent that it relates to plants, and [6](#) prescribing of control measures by Minister.

#### Auditing Profession Act (Draft procedure guides)

Draft section 48B search and seizure procedure guide, and draft section 48A procedure guide on the referral of non-audit complaints to accredited professional bodies, available from IRBA. Comment deadline 13 September 2021.

### Carbon Tax Act (Draft Taxation Laws Amendment Bill 2021)

The draft bill proposes amending [sections 6](#) (calculation); and [12](#) (carbon budget allowance), as well as [schedule 2](#).

*Note: The Draft Rates and Monetary Amounts and Amendment of Revenue Laws Bill 2021 proposes amending the [rate of carbon tax on greenhouse gas emissions](#).*

### Competition Act (Guidelines)

The draft guidelines on collaboration between competitors on localisation initiatives proposes, [amongst others](#), that the participation by firms in the discussions on any localisation initiative within the provisions of the guidelines do not amount to a prohibited restrictive horizontal practice. Comment deadline 27 September 2021.

*Note: Collaboration around localisation initiatives may involve the identification of opportunities for localisation initiatives; the process of setting industry local procurement targets; the process of setting individual firm local procurement targets; and demand forecasting.*

*Further note: No competitively sensitive information must be shared or discussed among firms in the collective discussions on localisation.*

*Final note: Only aggregated information on the percentage and volumes of industry data may be shared and discussed among firms.*

### Competition Act (Memorandum of agreements)

Memorandum between [the Competition Commission](#) and [the National Agricultural Marketing Council](#); memorandum between [the Competition Commission](#) and [the South African National Association for Specialised Education](#); and minor revised memorandum with the [Council for Medical Schemes](#).

### Co-operative Banks Act (Draft conduct standard)

[Draft conduct standard 2021](#) (requirements for registered co-operative financial institutions in relation to their provision of financial products and financial services) covers, amongst others, business principles, governance, suitability and closures of products and services, advertising, disclosures, and complaints. Comment deadline 24 September 2021.

### Customary initiation Act (Commencement)

As from 1 September 2021, the Act will further regulate customary male and female initiation practices while considering interacting Constitutional Rights; avoiding one-size-fits-all rigidity (e.g. section 37 Provincial peculiarities); and requiring consents and stating prohibitions for these voluntary practices.

### Customs and Excise Act (Draft Tax Administration Laws Amendment Bill 2021)

The draft bill proposes amending sections 6 (degrouing depots); 38A and 64E (accredited clients); 47 (minor underpayment); 75 (distillate fuel levy refund application); 76 (refunds under R100); and 79 (offences involving customs uniforms).

*Note: The Draft Taxation Laws Amendment Bill 2021 proposes continuation of amendment of schedules.*

### Disaster Management Act (COVID-19)

Declaration of COVID-19 as a national disaster extended to 15 September 2021 "taking into account the need to continue augmenting the existing legislation and contingency arrangements undertaken by organs of state to address the impact of the disaster".

### Disaster Management Tax Relief Act (Draft Taxation Laws Amendment Bill 2021)

The draft bill proposes amending section 8 (deduction in respect of donation to COVID-19 disaster relief organisation and increase in annual donations limit for donations to Solidarity Fund).

### Electricity Regulation Act (Licence exemptions)

Schedule 2 (exemption from licence obligation) amended, including varying, suspending or removing a registration on application by a registrant or third party; or upon violation of the regulatory requirements to comply with the code (as defined) and any other authorisations and/or agreements as may be required.

*Note: The amendments also state that a registration may be revoked on application by a registrant or if the facility is no longer required or when the conditions of registration are not met.*

*Further note: The introductory paragraph mentions twice that the Minister intends to make the changes and the text does not state a commencement date, but the heading and lack of comment deadline indicates that this notice was meant to be a final notice, and not a draft notice.*

#### **Employment Tax Incentive Act (Draft Taxation Laws Amendment Bill 2021)**

The draft bill proposes amending [section 1](#) (employee); and [6](#) (qualifying employees).

#### **Estate Duty Act (Draft Tax Administration Laws Amendment Bill and Draft Taxation Laws Amendment Bill)**

The draft bills propose making textual corrections to [section 5](#) (determination of value of property) and [section 13](#) (right of recovery by executor).

#### **Financial Advisory and Intermediary Services Act (Reports)**

FAIS communication 16 of 2021, available from the FSCA, states that compliance reports do not need to be submitted during 2021; and that there is no prescribed handover report format for 2021.

*Note: The communication also provides reminders that irregularity reports, if any, must be provided in addition to handover reports; and that any outstanding compliance reports for years up to 2018 must still be submitted.*

#### **Financial Sector Regulation Act (Financial institutions)**

[Levies and levy due dates](#) gazetted.

#### **Income Tax Act (Draft Rates and Monetary Amounts and Amendment of Revenue Laws Bill 2021)**

The draft bill proposes amending [section 6](#) and [6A](#), and the Seventh Schedule [paragraph 9](#) amounts.

#### **Income Tax Act (Draft Tax Administration Laws Amendment Bill 2021)**

The draft bill proposes amending [sections 18A](#) (further information requests re donation deductions); [49F](#) (withholding taxes on royalties return submission); and [64LA](#) (refund of tax re dividends in specie time limit). Comment deadline 28 August 2021.

Note: The [First](#) (livestock deduction assessments and records); [Fourth](#) (estimation if total amount of employees tax unknown, penalty correction if estimation found incorrect, and provincial tax where year of assessment under 6 months) and [Seventh Schedule](#) (certificates by employers penalty) will also be amended.

#### [Income Tax Act \(Venture capital company shares\)](#)

Reminder that [section 12J](#) was amended from 31 July 2021.

#### [Infrastructure Development Act \(Draft national infrastructure plan 2050\)](#)

The draft plan is available from the Department of Public Works and Infrastructure. Comment deadline 17 September 2021.

#### [Insurance Act \(Contingent business interruption claims\)](#)

FSCA press release dated 12 August 2021 (update on contingent business interruption claims), available from the FSCA, requests that policyholders proactively collate all the necessary information and/or documents (with examples given in the notice); and contact the claims department of the insurer, the loss adjusters or broker if assistance is required.

#### [Liquor Products Act \(Class designations\)](#)

The [limitation on particulars regarding sale of liquor products](#) (class designations) has been amended.

#### [Liquor Products Act \(Regulations\)](#)

Amendments to the liquor product regulations include, [amongst others](#), redefining natural wine; stating mampoer raw materials and requirements; stating low alcohol wine, spirit-barrel-aged wine and vodka label requirements; and stating wine reference (to sulphites, gluten, low, light or kilojoules) requirements.

#### [National Sport Recreation Act \(COVID-19\)](#)

[COVID-19 sports, recreation, cultural and arts directions](#) reference updated to reflect current movement and gathering regulations.

### Natural Scientific Professions Act (Fields of practice)

Listed [fields of practice](#) amended to include L4 Competent Natural Science Geo-Professionals under earth science and geological science.

*Note: A person must [register](#) as a professional, candidate or certificated natural scientist, and [meet the relevant requirements of the Act](#), if they fall within the listed fields of practice and wish to practise in a consulting capacity.*

### Pension Funds Act (Draft conduct standard)

The draft conduct standard (conditions prescribed in respect of pension fund benefit administrators) is available from the FSCA and proposes replacing the current [conditions determined in respect of administrators acting on behalf of pension funds](#). Comment deadline 13 September 2021.

### Plant Health (Phytosanitary) Bill

The Bill proposes, [amongst others](#), vicarious liability of employers, and notification duties for land users.

### Promotion of Equality and Prevention of Unfair Discrimination Act (Constitutional court)

CCT13/20 held that [section 10\(1\)](#) (prohibition of hate speech) is unconstitutional to the extent that it includes “hurtful”.

### Rates and Monetary Amounts Act (Draft Amendment Bill 2021)

The [draft bill](#) proposes rate adjustments referenced in the annual budget 2021, as well as proposed corrections to the 2020 Act relating to registered micro businesses in section 2 and schedule 1.

### Securities Transfer Tax Act (Draft Taxation Laws Amendment Bill 2021)

The draft bill proposes amending [sections 1](#) (collateral arrangement); and [8](#) (exemptions).

### Social Assistance Act (COVID-19)

COVID-19 social relief of [distress grant, centres and older persons residence directions](#) gazetted.

### South African Schools Act (COVID-19)

COVID-19 schools directions revised for return of learners to primary schools and schools for learners with special education needs; and for sport and extracurricular activities.

*Note: The COVID-19 regulations state that [primary school learners](#) from Grades R to 7 must return to the traditional and daily attendance timetabling model from 2 August 2021.*

*Further note: The social distancing measures in primary schools is reduced to one metre, and strict adherence to all health protocols including the wearing of face masks, the washing of hands and hand sanitation must be observed.*

### Special Investigating Units and Special Tribunals Act (Department of Water and Sanitation)

Third investigation launched into the activities of the Department of Water and Sanitation relating to 4 listed contracts for the procurement of, contracting and implementation of information technology.

*Note: Related past investigations include the investigation into the previous [Department of Water Affairs](#), and investigations [1](#) and [2](#) into the Department of Water and Sanitation.*

### Standards Act

New, proposed, amended, and withdrawn [standards](#) have been gazetted for 30 July and 13 August 2021.

### Tax Administration Act (Draft Tax Administration Laws Amendment Bill 2021)

The draft bill proposes amending [sections 95](#) (estimation of assessments) and [99](#) (period of limitation for issuance of assessments).

### Tax Administration Act (Penalties)

Revised [incidences of non-compliance by natural persons subject to fixed amount penalty](#) have been proposed, relating to a single outstanding income tax return. Comment deadline was 11 August 2021.

### Transfer Duty Act (Draft Taxation Laws Amendment Bill 2021)

The draft bill proposes amending [section 9](#) (exemptions from duty).

### [Unemployment Insurance Act \(Looting and damage temporary financial relief\)](#)

An employer who had to close or partially [close](#) its business due to the civil unrest in Gauteng and Kwa-ZuluNatal 9 to 18 July 2021 may apply for [temporary financial relief](#) for its affected employees and/or workers if it is registered with the UIF; its closure is directly linked to the destruction, damage or looting of its workplace (Harm); it accepts the terms of the scheme; and it provides prescribed details of the Harm and any other information that the Commissioner may require.

### [Value-added Tax Act \(Draft Taxation Laws Amendment Bill 2021\)](#)

The draft bill proposes amending [sections 18D, 9 and 10](#) (temporary letting of residential property); [section 2](#) (life insurance policies); and [11](#) (international telecommunications services); and; as well as [schedule 2](#) (zero rating super fine maize meal). Comment deadline 28 August 2021.



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## Financial

# 2. LONG-TERM INSURANCE ACT: DRAFT POLICYHOLDER PROTECTION RULES

Amendments have been proposed to the policyholder protection rules relating to, [amongst others](#):

- (i) The definitions of beneficiary, investment value, living annuity, publish and reinstate;
- (ii) Distribution channel requirements; provision in systems for fair treatment; and rules for reinstatement of certain policies
- (iii) Product design principles, framework, and approval; and monitoring the sustainability of income of the living annuity;
- (iv) Determined premiums before and after a policy; and special notification of certain increases relating to a premium payable under a risk policy;
- (v) Adverts referencing the word funeral or a derivative thereof, or referencing a loyalty benefit, no-claim bonus or rebate in premium;
- (vi) Disclosures relating to living annuities; bundled product; investment values; reinstatement limitations and conditions; ongoing loyalty benefit disclosures; and ongoing living annuity disclosures; and
- (vii) Claims (time limits, insurance fraud, records, explaining consequences of giving false or incomplete info); prohibition on denying a claim solely on information from a tracking or fitness device; and termination rules where policy with loyalty benefit terminates due to death before agreed contractual payment date.

*Note: Specific attention is also given to microinsurance and funeral policy product standards relating to, amongst others, the definition of funeral policy; application of the standards; benefit structure; waiting periods; direct payments of a benefit to a service provider; and certain administration fees to beneficiaries.*

Comment deadline 10 September 2021.



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## Financial

### 3. SHORT-TERM INSURANCE ACT: DRAFT POLICYHOLDER PROTECTION RULES

Amendments have been proposed to the policyholder protection rules relating to, [amongst others](#):

- (i) The definitions of beneficiary, commercial lines, consumer credit insurance, credit life insurance, group scheme, mandatory credit life insurance, optional credit life insurance, policy, and publish;
- (ii) Limitations on consequences of misrepresentation; provision in systems for fair treatment; distribution channel requirements; and amendments to mandatory credit life insurance and to substitution of consumer credit policies;
- (iii) Additional void provisions (eg discharge of insurer obligation cannot be made dependant on discharge by another person of a duty under a reinsurance policy);
- (iv) Product design principles, framework, and approval; policyholder details for data management; and monitoring of product performance and measures for regular reporting of identified risks to the executive management, the board and relevant board committees;
- (v) Determined premiums before and after a policy; and determined excess on certain personal lines policies;
- (vi) Adverts referencing a loyalty benefit, no-claim bonus or rebate in premium;
- (vi) Disclosure definition of significant exclusion or limitation; disclosures relating to bundled products; disclosures relating to personal lines policies; and ongoing loyalty benefit disclosures; and
- (vii) Claims (time limits, insurance fraud, records, and explaining consequences of false or incomplete info); prohibition on denying a claim solely on information from a tracking or fitness device; and termination rules where policy with loyalty benefit terminates due to death before agreed contractual payment date.

*Note: The amendments also give specific attention to microinsurance product standards (structure, waiting periods, and prohibition on certain administration fees to beneficiaries).*

Comment deadline 10 September 2021.

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## Tax

# 4. INCOME TAX ACT: DRAFT TAXATION LAWS AMENDMENT BILL 2021

The draft bill proposes amending:

- (i) [Sections 1](#) (definitions); [7C](#) (loan, advance or credit by connected person to trust); [8](#) (certain amounts to be included in income); [8E](#) (certain dividends deemed to be interest); [8F](#) (interest on hybrid instruments); and [8FA](#) (hybrid interest);
- (ii) [Sections 9D](#) (net income of controlled foreign company); [9H](#) (change of residence, ceasing to be a CFC or becoming a headquarter company); and [9HC](#) (disposal of retirement fund interest on change of residence);
- (iii) [Sections 12DA](#) (rolling stock deduction); [12F](#) (airport and port assets deduction); [12H](#) (learnership agreements deduction); [12I](#) (industrial policy projects); and [13quat](#) (urban development zones deductions);
- (iv) [Sections 19](#) (reduction of debt); [20](#) (set-off of assessed losses); [23M](#) (interest limitations regarding debts owed to persons not subject to tax); [23N](#) (interest limitations regarding reorganisation and acquisition transactions);
- (v) [Sections 25](#) (deceased estates); [28](#) (short-term insurance business); and [29A](#) (long-term insurers);
- (vi) [Sections 40CA](#) (shares or options for no consideration); [42](#) (asset-for-share transactions); [45](#) (intra-group transactions); [46](#) (unbundling company); [46A](#) (expenditure limitations regarding shares in unbundling company); and [47](#) (liquidation, winding-up and deregistration); and
- (vii) [Sections 49E](#) (withholding taxes on royalties); [50A](#) (withholding tax on interest); and [64G](#) and [64H](#) (withholding tax on dividends).

*Note: Amendments also proposed to the [Second](#) schedule (lump sum benefits); the [Fourth](#) schedule (employees and provisional tax); the [Seventh](#) schedule (employment or office benefits); the [Eighth](#) schedule (capital gains tax); and the [Eleventh](#) schedule (exempted government grants).*

Comment deadline 28 August 2021.



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