



The Contemporary Gazette

relevant new legislation for your business



Legal Update

Volume 16 Issue 16, 13 September 2021

This Update

This newsletter overviews new relevant National laws up to **10th September 2021**.

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General

1. Notable one-liners



General

1. NOTABLE ONE LINERS

Animal Diseases Act (Foot and mouth disease)

Foot and mouth disease control measures (KZN management area), available from the Department.

Auditing Profession Act (Code of conduct)

15 December 2022 revisions to code of professional conduct for registered auditors (to address objectivity of an engagement quality reviewer and other appropriate reviewers), available from IRBA.

Auditing Profession Act (Registration requirements)

Auditor registration requirements updated to, [amongst others](#), include proof that an applicant is a member in good standing of an accredited professional body; and to state that validity of registration is subject to compliance with the annual renewal requirements.

Note: Renewal requirements include compliance with the CPD policy from 1 April 2022; continued SA residence; proof of continued membership in good standing with an accredited professional body; and determination by the regulatory board to be a fit and proper person to continue to practice.

Further note: Document submission for re-registration of firms also apply to firms merging or unmerging who have not previously submitted these documents.

Final note: Late reinstatements may be considered based on the registered auditor's individual circumstances; and, with regard to assurance/non-assurance status, any applicant may be required to attend an interview with the proficiency assessment panel.

Banks Act (FSCA communication)

Communication 18 of 2021, available from the FSCA, sets FSCA notification expectations from banks, mutual banks and foreign bank branches ("Banks") of any intention to close a bank branch for longer than 30 days for refurbishment or conversion to self-service branches, and to remove ATMs, so that fairness to financial customers may be assessed.

Note: A Bank is expected to conduct a needs analysis of the financial customers that use that branch or ATM and to consider the impact of the proposed closure on them; and to submit at least 6 months before the planned closure a clear summary of the outcome of the analysis.

Further note: Existing alternatives to access services or proposed alternatives (that consider distance, customer effort and accessibility as per section 2(5)(c) of conduct standard 3 of 2020) must be stated in writing, and also be published on all distribution channels as preferred by affected customers.

Final note: A Bank is expected to keep an analysis of financial customer impact and potential alternatives under review between announcing and implementing the closures; and to keep the FSCA informed of any changes to the actual submitted proposal.

Compensation for Occupational Injuries and Diseases Act (Banking details)

Notice regarding verification of bank account details before payment of claims and claims related expenses (for medical claims, compensation claims, and compensation pensions), available from the Department of Employment and Labour.

Note: Impacted parties are required to update their banking details in line with the notice by 30 September 2021.

Criminal Procedure Act (Publication of information)

The Criminal Procedure Amendment Bill proposes amending [section 154](#) to further regulate the publication of information that may reveal the identity of an accused, a witness or person against whom an offence has allegedly been committed who is under 18.

Disaster Management Act (Declaration of COVID-19 state of disaster)

[Declaration](#) 15th extension to 15 October 2021 "taking into account the need to continue augmenting the existing legislation and contingency arrangements undertaken by organs of state to address the impact".

Disaster Management Act (COVID-19)

Adjusted level 2 amendments made to the COVID-19 regulations including, [amongst others](#), that higher education directions may contain further specific measures for institutions of higher education; and changes to the gathering, movement and alcohol limitations.

Note: The level 2 regulations will be reviewed and amended where necessary 2 weeks from 12 September 2021.

Electronic Communications Act (COVID-19)

COVID-19 communications standards directions regarding radio frequency spectrum access amended.

Financial Sector Regulation Act (Provision of a benchmark)

The draft benchmark regulations propose designating the provision of a benchmark as a financial service, that requires licensing of a benchmark administrator (person that provides a benchmark); FSCA conditions relating to equivalence and foreign benchmarks; a FSCA public register; and a list of critical benchmarks. Comment deadline 13 October 2021.

Note: Benchmark here refers to any index by reference to which the amount payable under a financial instrument or a financial contract, or the value of a financial instrument, is determined; or that is used to measure the performance of an investment fund with the purpose of tracking the return of such index or of defining the asset allocation of a portfolio or of computing the performance fees.

Further note: Index is defined as any figure published or made available to the public; and regularly determined entirely or partially by the application of a formula or other method of calculation, or by an assessment, and on the basis of the value of one or more underlying assets or prices, and any derivative thereof; and is determined to be an index for this purpose by the FSCA.

Final note: Provision of a benchmark includes administering the arrangements for determining a benchmark; collecting, analysing or processing input data for the purpose of determining a benchmark; and determining a benchmark through the application of a formula or other method of calculation or by an assessment of input data provided for that purpose.

Income Tax Act (Green paper on comprehensive social security and retirement reform)

The Department of Social Development green paper has been withdrawn.

Infrastructure Development Act (Draft national infrastructure plan 2050)

The comment deadline for the plan, available from the Department of Public Works and Infrastructure, has been extended to 1 October 2021.

Insurance Act (Licensing of foreign entities)

Joint guidance notice 1 of 2021, to be read with joint guidance notice 1 of 2019, available from the FSCA.

Note: Foreign entities must be licensed to insure first party risks in SA; licensing applications will be considered in terms of [section 23](#) and [schedule 3](#) item 13(b); and licensing exemption applications will be considered in terms of [section 66](#).

Further note: Foreign entities that meet the definitions of [captive insurer](#) read with [first party risks](#) are regarded as conducting [section 5](#) insurance business if they act as per paragraph 4.7 of the notice (soliciting insurance business directly from SA based subsidiaries or acting indirectly by intermediary).

Final note: The notice refers foreign entities that plan to undertake captive or cell captive insurance business in SA to paragraph 5 of the joint guidance notice 1 of 2019 (potential regulatory action).

Insurance Act (Outsourcing)

Draft joint standard 2021 (outsourcing by insurers) proposes sensible standards for [licensed insurers](#) regarding [material](#) outsourcing [principles](#) and [policy](#) under the direction of the [board of directors](#); and additional [external auditor](#) assurance, [commencement notice](#) and [termination notice](#) expectations. Comment deadline 26 October 2021.

Note: The draft standard (with questionnaire, comment template, and joint communication 5 of 2021 available from the FSCA) will repeal prudential standard GOI 5 (outsourcing by insurers) subject to [transitional measures](#); and will amend prudential standards GOB, GOG, GOL, and GOM (available from the Prudential Authority).

Further note: Consideration of applicable law for outsourcing may also be required, as the draft suggests [material](#) outsourcing [arrangements](#) require service provider ability to comply with applicable laws (Ability); a [contractual requirement](#) to do so; and regular Ability [reviews](#). Also see the [definition of compliance risk](#).

Final note: Examples of applicable law for outsourced activities may include, but are not limited to, [section 5\(3\)](#) and [section 30\(2\)](#) (principle of proportionality) and 30(3) of the Insurance Act; [section 6](#) of the Prevention and Combatting of Corrupt Activities Act; [rights of refusal](#) and [third party notification](#) under the Promotion of Access

to Information Act; [section 3](#) of the Protection of Personal Information Act; [section 24](#) of the Financial Intelligence Centre Act; and [section 22](#) of the Companies Act (if a company).

Justices of the Peace and Commissioner of Oaths Act (Commissioners of oaths)

Chartered members of the SA Institute of Occupational Safety and Health added to the list of [designations](#).

Note: The list of designated commissioners can be well-served by a general revision and reference update.

Legal Practice Act (Rules)

Proposal made that Council may grant [leave of absence to a candidate attorney](#) in certain instances. Comment deadline 27 September 2021.

Local Government Municipal Systems Act (Amendment Bill)

CCT54/16 found the Amendment Act 7 of 2011 unconstitutional prospectively, suspended for 2 years to allow time to remedy the defect - the [Amendment Bill 2019](#) is meant to remedy the defect.

Note: See, amongst others, definitions; appointment of managers; employment of dismissed staff; limitation of political rights; maladministration; and voting.

Medical Schemes Act (Levies)

Adjusted [medical scheme levy](#) for the 2021/22 levy year gazetted.

National Environmental Management Act (Draft financial provisioning regulations)

The [draft financial provisioning regulations](#) intend to update how an applicant or holder must determine, maintain and manage financial security for progressive rehabilitation, decommissioning, closure and post-closure activities associated with reconnaissance, exploration, prospecting, mining and production. Comment deadline 40 days from 27 August 2021.

Note: There are several [proposed exclusions](#) from the application of the regulations.

Further note: Financial guarantee will be [defined](#) as a financial guarantee or insurance product, which identifies the Minister responsible for mineral resources as the beneficiary, issued by a [financial institution](#) with at least an investment grade credit rating from an international rating agency.

Final note: Parent or affiliate company guarantee will be [defined](#) as a National Treasury approved, legally binding commitment, by the parent or affiliate company of the applicant or holder, registered in a country which is a signatory to the [Convention on the Recognition and Enforcement of Foreign Arbitral Awards](#) and has at least an investment grade credit rating from an international rating agency, who guarantees to fulfil environmental liability obligations for and on behalf of the holder or applicant in question.

National Minimum Wage Act

[Invitation to submit written representations](#) concerning possible adjustments to the national minimum wage gazetted. Comment deadline 1 October 2021.

Note: After the publication of the Commission annual report, a further opportunity of 14 days will be given to submit written representations regarding recommendations included in the report.

National Road Traffic Act (COVID-19)

[COVID-19 directions \(public transport driving licences, discs, permits and vehicle registrations\)](#) amended 31 August 2021 so that all learners licences, driving licence cards, temporary driving licences and professional driving permits that expire 26 March 2020 to 31 August 2021 are deemed valid.

Note: Their validity periods have been extended for a further grace period ending on 31 March 2022.

Petroleum Products Act (Mandatory blending of biofuels with petrol and diesel regulations)

[Mandatory blending of biofuels](#) definitions (bio-ethanol, biodiesel and biofuel blend) amended.

Note: A licensed petroleum manufacturer may not refuse to purchase biofuel or biodiesel manufactured by a licensed biofuels manufacturer, unless it can prove it does not have sufficient volumes of petroleum petrol or petroleum diesel to accommodate the volume of bio-ethanol or biodiesel being sold.

Petroleum Products Act (Specifications and standards)

The [specifications and standards](#) for petroleum products that may be sold for consumption in SA will be revised from 1 September 2023.

Note: See the definitions of bio-ethanol, biodiesel and blend; permitted petrol and diesel grades; and labelling requirements.

Protection of Personal Information Act (Draft regulations)

Notice gazetted that amendments have been proposed to the [POPI regulations](#). Comment deadline 30 September 2021.

Note: The draft amendments will be incorporated in due course - they do not seem to be available at present.

Standards Act

New, proposed, amended, and withdrawn [standards](#) gazetted for 27 August and 3 September 2021.



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