



The Contemporary Gazette

relevant new legislation for your business



Legal Update

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This Update

This newsletter overviews new relevant National laws up to **1st October 2021**.

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General

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1. COMPANIES ACT: DRAFT COMPANIES AMENDMENT BILL

The comment deadline for the Draft Companies Bill 2021 (the Draft Bill) is 30 calendar days from 1 October 2021.

The Draft Bill, that includes a helpful [memorandum](#), proposes, [amongst others](#):

- (i) [Definitions](#): Substituting meaning of securities and defining treasury regulations and true owner;
- (ii) [Memorandum amendments](#): Certain amendments take effect 10 business days after receipt by the Commission, unless endorsed or rejected with reasons before the 10 business days end;
- (iii) [Records](#): Prescribed location notices for records not accessible at the registered office or moved between locations; additional records that may be accessed; less time for a company to comply with an access request; and more offences for directors and prescribed officers in addition to company offences (see sections 26 and 31);

Note: The Draft Bill also proposes that the right to inspect and copy information contained in reports to annual meetings and in notices and minutes of annual meetings, and certain related communications, will not apply to a private company, non-profit company or personal liability company whose public interest score is under 100 and whose annual financial statement is internally prepared; or whose public interest score is under 350 and whose annual financial statement is independently prepared.

- (iv) [Annual financial statements](#): Must include particulars showing remuneration and benefits received by each director and prescribed officer, and each individual must be named;

Note: The Draft Bill also proposes that where any provisions of the proposed section 30A directors' remuneration report becomes subject to audit in terms of section 30, nothing will require any company policies or the background statement of the remuneration report to be made subject to such audit.

- (v) [Prescribed remuneration policy and report](#): Public and state-owned company must present its remuneration policy for directors and prescribed officers, for approval by ordinary resolution at the AGM (and every 3 years thereafter or whenever a material change is made); and the remuneration report must be compiled in the prescribed manner;

(vi) **Annual return**: Must include a copy of the latest annual financial statements in the manner set out in section 33; and a copy of the company's securities register and register of the disclosure of beneficial interest; and

Note: The Draft Bill also proposes the Commission may make the annual return available electronically to any person as prescribed.

(vii) **Validation of irregular share**: The court may, upon application by a company or a party that holds an interest in the company, validate the creation, allotment or issue of shares which are otherwise invalid.

The Draft Bill further proposes, amongst others:

- (i) **Stakeholder agreement**: Certain issued shares transferred to a stakeholder (as defined) to be held in terms of a stakeholder agreement (as defined);
- (ii) **Financial assistance to a subsidiary**: Does not require special resolution;
- (iii) **Pro rata share-buyback**: Circumstances where a special resolution is required;
- (iv) **Beneficial interest in securities**: Register of disclosure of beneficial interest; true owner (as defined) to be a person with a beneficial interest in a security in certain instances; and quarterly requests from registered security holders for details on beneficial interest holders where identities are unknown;

*Note: Related law to consider here many include the **Financial Intelligence Centre Act**.*

- (v) Social and ethics committee report, and remuneration report, must be presented at an **annual general meeting of the shareholders**; and
- (vi) **Social and ethics committees**: Public company AGM must include a social and ethics committee report and a remuneration report presentation as well as provide for a social and ethics committee appointment in line with section 72 procedural requirements; certain subsidiaries will be excluded from the committee requirements; and intentions to apply for exemption must be published as prescribed; and

Note: The Draft Bill proposes letting the Minister decide and prescribe the qualifications of committee members, and the functions of such committees; and that a social and ethics committee must prepare a report in the prescribed manner and form, which must be externally assured.

Further note: The Draft Bill suggests that a presented social and ethics report must contain the additional information in the form of a statement that there has not been an instance of material non-compliance where there has been one or more instances of non-compliance, where such fact has been disclosed.

Final note: Related law to consider here may include, amongst many others, the [Basic Conditions of Employment Act](#); the [Broad-based Black Economic Empowerment Act](#); the [Consumer Protection Act](#) (if applicable); the [Employment Equity Act](#); the [Financial Advisory and Intermediary Services Act](#) consumer considerations (if applicable); the [National Credit Act](#) consumer considerations (if applicable); the [National Environmental Management Act](#); the [Occupational Health and Safety Act](#); the [Prevention and Combating of Corrupt Activities Act](#); and the [Promotion of Equality and Prevention of Unfair Discrimination Act](#).

(vii) [Annual auditor appointment](#): At shareholders meeting; and 2 financial years must pass before past director, prescribed officer, company secretary, accountant, bookkeeper, related secretarial work, and certain employees or consultants, may be appointed as auditor;

Note: Related law to consider here may include the [offences in respect of corrupt activities relating to agents](#).

Finally, the Draft Bill proposes, amongst others:

- (i) [Public offerings](#): Revised employee share scheme definition that also references purchase of shares;
- (ii) [Fundamental transactions](#): Revised threshold for when approval of fundamental transaction, regulation of affected transactions and offers, and takeover regulations apply to a private company;
- (iii) [Business rescue](#): Certain amounts due to a landlord will be regarded as post-commencement financing; and making the voting interest of the landlord equal to such post-commencement financing amount;
- (iv) [Company names](#): An applicant may approach the Commission to substitute a name where a company failed to change its name within the determined period of an administrative order;
- (v) [Dispute resolution](#): Voluntary dispute resolution options will be limited to referral to the Companies Tribunal, followed by arbitration if that mediation fails;
- (vi) [Companies Tribunal](#): Revision of Tribunal structure; and Tribunal may conciliate, mediate, arbitrate or adjudicate on any administrative matters affecting any person in terms of the Companies Act as may be referred to it in the prescribed manner by the B-BBEE Commission in terms of the [Broad-Based Black Economic Empowerment Act](#); and
- (vi) [Financial Reporting Standards Council](#): The Council may consider relevant information regarding financial reporting standards reliability and compliance, and adapt international reporting standards for local circumstances through the issue of financial reporting pronouncements.

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General

2. NOTABLE ONE LINERS

Air Services Licensing Act (Civil Aviation Amendment Bill)

The Bill proposes making a [reference update](#) to the Commissioner as defined in the Civil Aviation Act.

Auditing Professions Act (IRBA code of professional conduct for registered auditors)

Draft quality management related conforming amendments to the code available from IRBA. Comment deadline 17 October 2021.

Banks Act (Financial Sector Laws Amendment Bill 2020)

The Bill proposes not applying [section 54](#) (amalgamations, mergers and arrangements) to a bank in resolution; amending [section 60](#) (directors and officers - set off provision); and repealing [sections 68](#) (winding-up), [69](#) (curator appointment), and [69A](#) (investigation of affairs of bank under curatorship).

Note: Also see consequential changes to [sections 51](#), [89A](#) and [91](#) that are related to the proposed repeal of the above sections.

Births and Deaths Registration Act (Constitutional Court)

The Constitutional Court [confirmed the following changes](#) from 22 September 2021: that section 10 (notice of birth of child born out of wedlock) is invalid and must be severed from the Act; and that the proviso in section 9(2) referencing section 10 must also be severed.

Note: Related laws, that may be worth noting additionally, include the [Children's Act](#) (eg sections 6 general principles; 7 best interest of child standard; 8 application of Act; 9 best interests of child paramount; 36 presumption of paternity where child born out of wedlock; and 39 rights of child born of voidable marriage).

Civil Aviation Act (Civil Aviation Amendment Bill 2018)

The Bill proposes, [amongst others](#), redefining the establishment of an aircraft accident and incident investigation authority; including environmental protection regulation in Civil Aviation Authority functions; enhancing provisions regarding conflict of interest; clarifying inspector powers; and adding offences involving the use of aircraft.

Companies Act (Financial Sector Laws Amendment Bill 2020)

The Bill proposes amending [section 81](#) (winding up solvent companies by court order), [sections 112 to 114](#) (approval for certain fundamental transactions), and [section 128](#) (non-application of business rescue).

Competition Act (Financial Sector Laws Amendment Bill 2020)

The Bill proposes amending [section 18](#) (intervention in merger proceedings) to exclude transactions in relation to the proposed Financial Sector Regulation Act [section 166S](#) resolution from sections 13(5)(b), 13(6), 14(1)(b), 14(2), and 16(2) of the Competition Act.

Constitution of the Republic of South Africa (Expropriation without compensation)

The Constitution Eighteenth Amendment Bill proposes [limiting the Constitutional right to property](#).

Convention on International Interests in Mobile Equipment Act (Civil Aviation Amendment Bill)

The Bill proposes making a [reference update](#) to the Civil Aviation Authority.

Co-operative Banks Act (Financial Sector Laws Amendment Bill 2020)

The Bill proposes repealing [chapter 4](#) (deposit insurance fund and schemes) and [section 30](#) (winding up or judicial management); amending [section 1](#) (fund), [55](#) (Agency functions), and [80](#) (offences); and inserting [section 30A](#) (designated institutions).

Customs and Excise Act (Liquor Products Amendment Act)

Once a commencement date is gazetted the Amendment Act [will](#) repeal the wine and spirit board definition; and make the blending of brandy and production from spirits of any other beverage or non-excisable goods subject to supervision by an officer as the Commissioner considers necessary.

Disaster Management Act (COVID-19)

COVID-19 regulations adjusted level 1, including making provision for indoor gatherings of up to 750 and outdoor gatherings of up to 2000 (subject to adequate space limitations); and taking passenger ships for international leisure purposes off the list of specific exclusions;

Electronic Communications Act (Market inquiry)

Inquiry launched into signal distribution services, giving stakeholders 10 working days from the date of publication of 'this' notice (17 September 2021) and the questionnaire on the ICASA website, to send any questions of clarity.

Note: Stakeholders will be given an opportunity to submit written responses to the questionnaire within 45 working days from when ICASA publishes a briefing note in response to all questions of clarity.

Financial Institutions (Protection of Funds) Act(Financial Sector Laws Amendment Bill 2020)

The Bill proposes that sections 5 (curator) and 6 (Authority powers) should not apply where a proposed Financial Sector Regulation Act section 166J determination is in force.

Financial MarketsAct (Financial Sector Laws Amendment Bill 2020)

The Bill proposes amending sections 3 (application), 60 (cancellation or suspension) and 64 (market infrastructure amalgamation, merger, transfer or disposal).

Financial Sector Regulation Act (Financial Sector Laws Amendment Bill 2020)

The Bill proposes establishing a framework for the orderly resolution of banks, systemically important non-bank financial institutions and holding companies of banks or systemically important non-bank financial institutions designated as systemically important.

Identification Act (COVID-19)

The COVID-19 entry into SA and exit from SA directions now allow for the application and collection of identity cards or documents.

Immigration Act (COVID-19)

The [COVID-19 entry and exit directions](#) now gives certain Visa concessions up to 31 December 2021 (also see direction 21 declaration of undesirability); and lists services to be rendered by Home Affairs in level 2.

Insolvency Act (Civil Aviation Amendment Bill 2018)

The Bill proposes amending [preference to certain statutory duties](#), by adding money, fees, charges or levies that an insolvent collected for the Civil Aviation Authority in terms of the Civil Aviation Act.

Insolvency Act (Financial Sector Laws Amendment Bill 2020)

The Bill [proposes](#) inserting [section 22A](#) (liquidation of designated institutions); making a consequential amendment to [section 83](#); and making corrections and updates to [section 35A](#).

Insurance Act (Financial Sector Laws Amendment Bill 2020)

The Bill proposes amending [section 52](#) to exclude application of resolution chapter if insurer is a designated institution in terms of the Financial Sector Regulation Act.

International Air Services Act (Civil Aviation Amendment Bill 2018)

The Bill proposes making [reference updates](#) to the Commissioner as defined in the Civil Aviation Act.

Labour Relations Act (Bargaining councils)

Bargaining council [accreditation](#) gazetted for the National Bargaining Council for the Private Security Sector; the Bargaining Council for the Grain Industry (National); and the Motor Industry Bargaining Council (National).

Legal Practice Act (Code of conduct)

[Code of conduct](#) for legal practitioners, candidates and juristic entities amended to require, unless exempted, that any outstanding prescribed contact details be submitted to the Council within 60 days from 10 September 2021, and that a change in contact details be submitted within 30 days from such change.

Note: In addition, all communication that requires an answer must be answered within a reasonable time; responses to Council requests must be timeous and in full; compliance with Council directions must be timeous; and one must refrain from doing anything that may hamper the ability of the Council to carry out its functions.

Further note: The last expectation may be a bit open to wide interpretation but will be tempered by other applicable law, including the Constitution.

Legal Practice Act (Legal practice rules)

Amendments proposed to the [legal practice rules](#) (fees and charges; conversion of enrolment; and application for fidelity fund certificates). Comment deadline 10 October 2021.

Legal Practice Act (Sharing of offices)

Sharing of offices amendments proposed to the [code of conduct](#) (see clauses 13, 25 and 41). Comment deadline 17 October 2021.

Liquor Act (Liquor Products Amendment Act)

Once a commencement date is gazetted the Amendment Act will [remove references to beer and traditional African beer](#), as these will be included in the Liquor Products Act definitions.

Liquor Products Act (Liquor Products Amendment Act 2021)

Once a commencement date has been gazetted, the Amendment Act 2021 will, [amongst others](#), include beer, traditional African beer, and other fermented beverage (defined according to section 6A, 6B or 6C requirements) in the definition of liquor product; and add related section 11 name, section 16 import and section 17 export requirements; and adding section 23 offences.

Note: Provision will be made for registration of producers, blenders or fillers of liquor products, and for container and packaging standards; section 18 entry provisions will be amended including entry into a private dwelling without a warrant in certain instances; and section 19 destruction of seized items will be introduced.

Further note: The section 4, 16 and 17 threshold for alcohol content before a product must be regulated as a liquor product will be lowered; the section 6 alcoholic fruit beverages requirements will be amended; and the section 10 authorisations for certain sacramental beverages, oranges and cane sugar, and honey will be removed.

Final note: It is suggested that all the amendments should be considered and understood together with the revisions to be made to section 26 vicarious liability.

Marine Living Resources Act (Allocation of fishing rights)

Draft general policy on allocation of commercial fishing rights for the fishing rights allocation process of 2021 / 2022, and draft fishing rights allocation application fees, available from the Department. Comment deadline 30 calendar days from 13 September 2021.

Note: Draft sector specific policies for the fishing rights allocation process of 2021 / 2022 and the draft policy on the transfer of commercial fishing rights also available from the Department. Comment deadline 30 calendar days from 20 September 2021.

Medicines and Related Substances Act (Dispensing fee)

Amendment of calculation of [dispensing fee](#) to be charged by a pharmacist gazetted.

Mineral and Petroleum Resources Development Act (Mining charter)

Numerous media highlight a North Gauteng High Court ruling, which may be subject to appeal, that the [mining charter](#) 2018 is a policy instrument and not regulation; and that several clauses are to be set aside or amended, including capital goods procurement targets and 30% black empowerment targets.

MutualBanks Act (Financial Sector Laws Amendment Bill 2020)

The Bill proposes [section 4](#) guidance notes and directives (and making failure by a mutual bank or auditor to comply with directive a [section 92](#) offence); introducing [section 78A](#) (mutual banks in resolution).

Note: The Bill also proposes repealing [sections 29\(4\)\(b\)](#), [73](#) (judicial management), [74](#) (voluntary winding-up), [75](#) (winding-up), [76](#) (judicial manager/liquidator), [77](#) (dissolution), [80](#), and [81](#) (curator).

National Environmental Management Biodiversity Act (Elephants, lions, leopards and rhino)

Draft policy position on the conservation and ecologically sustainable use of elephant, lion, leopard and rhinoceros available from the Department. Comment deadline extended to 30 days from 14 September 2021.

Note: This notice should probably be read with the advisory committee review of the management, breeding, hunting, trading and handling of elephant, lion, leopard and rhinoceros, also available from the Department.

Postal Services Act (Reserved postal services)

Price cap regulations for the reserved postal services definition of price control period, and the general price control formula, will be amended on 1 April 2022.

South African Passports and Travel Documents Act (COVID-19)

The COVID-19 entry into SA and exit from SA directions now allow for the application and collection of passports.

South African Reserve Bank Act (Financial Sector Laws Amendment Bill 2020)

The Bill proposes SARB may, amongst others, form a company for the performance of its resolution functions in terms of the Financial Sector Regulation Act.

Standards Act

New, proposed, amended, and withdrawn standards gazetted for 10 and 17 September 2021, and 1 October 2021.



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