

MCLU

Monthly Compliance & Legislation Update

Presenter: **Lettie Janse van Vuuren CA(SA)**



24 NOVEMBER 2021

*Stay informed on the multitude of
Compliance and Legislation Updates*

This webinar covers changes during the month of October 2021

Presenter

Lettie Janse van Vuuren CA(SA)

- Lettie joined SA Accounting Academy in November 2017 as Head of Technical. She is a Chartered Accountant, Qualified Auditor, Assessor and Moderator.
- She is a **professional trainer and webinar host**, and with her relaxed and humorous presentation style, she is able to hold the attention of an audience. She has a unique ability to communicate with delegates at their respective levels of knowledge and experience. Over the last 20 years, she has trained thousands of partners, managers, trainee accountants and other professionals.
- She is responsible for our MCLU (Monthly Compliance and Legislation Updates).
- She was the Professional Development Manager at SAICA for 4 years and in charge of accrediting new training offices and monitoring existing ones (including the moderation of training offices and trainee assessments).
- Lettie is passionate about improving the efficiency and standardisation at practices. She has extensive experience on a variety of technical and practical topics which she consults on, including: SAICA re-accreditation assistance and preparation, IRBA inspection assistance and preparation, audit file reviews (post-issuance monitoring and EQCR), Quality control implementation, other office-specific manuals, and FASSET skills development facilitation.



WHAT'S ON THE AGENDA?



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Quotes



Almost everything
will work again
if you unplug it
for a few minutes...
Including you.

- Anne Lamott

ACCOUNTING UPDATE



ACCOUNTING

Accounting Update

The following items are dealt with here:

1. IFRS Monthly News Summary

- *nothing really new or important*

2. Accounting Manuals for Modified Cash Standards

- National Treasury has published final Accounting Manuals for Departments (Modified Cash Standards) for the 2021/22 financial year.
 - *MCS 2022_2023 published for comment 30 Sept 2021.docx*
 - *All AMDs.zip*
 - *Annexure C - PE Annual Report Specimen_March 2022.doc*

Accounting Update *(continued)*

3. Public Sector Tools Released

Issued by the Office of the Accounting-General for the Department of National Treasury.

➤ *Applicable for the financial year ending 31 March 2022.*

Interim Revenue Fund Template for 2021/22 financial year

- <https://oag.treasury.gov.za/Publications/09.%20National%20and%20Provincial%20Revenue%20Fund/For%20fin%20year%20ending%2031-03-2022/Interim%20Revenue%20Fund%20Template%202021-22.xls>

Guideline for preparing the excel interim template for financial year 2021/22

- <https://oag.treasury.gov.za/Publications/09.%20National%20and%20Provincial%20Revenue%20Fund/For%20fin%20year%20ending%2031-03-2022/Guide%20for%20prep%20of%20template%202021-22.doc>

Guide: Preparation of Revenue Fund template for the year ended 31 March 2022

- <https://oag.treasury.gov.za/Publications/09.%20National%20and%20Provincial%20Revenue%20Fund/For%20fin%20year%20ending%2031-03-2022/Guide%20on%20accounting%20issues%20for%202021-22.doc>

AUDITING UPDATE



Auditing Update

The following items are dealt with here:

Other:

1. IFAC_Audits of LCEs: Supplemental Guidance & Mapping documents published

- Provides further guidance on modifications and other changes to the auditor's report when using the proposed standard
 - Mapping document aims to help users navigate between existing, equivalent ISAs and the requirements in the newly proposed ISA for LCEs
- *Refer to Source Documents (3 by IAASB)*

Auditing Update

2. FRC Guidance - Addressing exceptions in the use of audit data analytics

➤ *Refer to Source Document*

- The guidance sets out important ethical considerations for professional accountants who are called upon to assist their employing organizations or clients in applying for and using COVID-19-related funding or financial support.
- For compilers, independent reviewers and auditors

Auditing Update *(continued)*

3. Staff Audit Practice Alert 6: Protection and Retention of Client Data

➤ *Refer to Source Document*

- 28 Sep 2021
- This IRBA Staff Audit Practice Alert serves to provide auditors with guidance and considerations with respect to the protection and retention of client data.
- Remote & new ways of working are creating more threats of data security breaches, because client data is exchanged on platforms (some = unsecure)
- It covers the following topics:
 - Possible implications on the audit firm if the confidentiality of client data is compromised;
 - Possible threats to the protection and retention of client data;
 - Possible developments and improvements of the control environment that can be implemented by an audit firm to protect and retain client data.

COMPANY SECRETARIAL UPDATE



Companies and Intellectual
Property Commission

a member of **the dti** group

Company Secretarial Update

➤ *Each notice is available to you as a Source Document*

The following items are dealt with here:

1. **Notice 50 of 2021:** Filling of joint business rescue practitioner appointments
 - Applicants make two separate appointments for joint business rescue practitioners whereas the new eservices system is designed to cater for joint appointments
 - *Refer to Notice for **detailed steps** to take*

CIPC Update *(continued)*

2. **Notice 52 of 2021:** Co-operative Annual returns and Annual submissions

- In filing the annual reports co-operatives must file audited financial statements or independent reviewed report depending on the Category as mentioned in the framework (set out in the Notice in tabular format) using XBRL platform.
- All co-operatives will be required to comply with the above provisions **starting from 1st April 2022**.
- The **Notice contains a table** that sets out the financial reporting framework in terms showing co-operative categories.
- The prescribed fees to be paid in respect of filing annual returns by the co-operatives to CIPC are also set out in the Notice.

CIPC Update *(continued)*

3. **Notice 53 of 2021:** Deregistration of Companies and CCs (due to non-submission of annual returns)

- As stated in Notice 37 of 2020, CIPC recommenced deregistration process of companies and CCs who are not up-to-date with their Annual Returns.
- In terms of section 82(3)(a)(i) of the Act, CIPC may only refer companies and CCs for deregistration if it has failed to file Annual Returns for two or more years, and therefore the Act provides sufficient time for companies and close corporations to comply with Annual Returns before being referred for deregistration.
- For the list of companies and CCs for which the notification process has commenced, kindly refer to www.cipc.co.za / Legislation / Gazettes / Gazette Publication No 202105 dated 22 September 2021.

CIPC Update *(continued)*

The publication can be accessed from
<http://www.cipc.co.za/index.php/legislation/gazettes>

- The deregistration status for companies and CCs in deregistration due to non-compliance with Annual Returns will only be cancelled/uplifted upon the filing of ALL outstanding Annual Returns as well as the required Audited Financial Statements (AFS) or Financial Accountability Supplements (FAS).
- *The notice also contains links to 3 useful guides on Annual Returns and related documents.*

CIPC Update *(continued)*

4. CIPC enforces Sec 30 of the Companies Act

High court orders JCI Ltd to pay the CIPC an administrative fine of R1 million

- The **core issue** of this case is that the Audited Annual Financial Statements of JCI Ltd were not compiled as per the requirements of Section 30 of the Companies Act, No. 71 of 2008, as amended, read with the International Financial Reporting Standards (IFRS).
- **Section 30**(1) requires that each year, a company must prepare annual financial statements within 6 months after the end of its financial year and Section 30(2) read with Regulation 27(4) which relates to IFRS requires that the annual financial statements must be audited in the case of a public company

CIPC Update *(continued)*

- Post an investigation by CIPC inspectors which found that for the period 2011 – 2017, JCI Ltd had acted in contravention of the abovementioned regulations, a Compliance Notice was issued to the board of directors of JCI Ltd requiring the company to produce IFRS compliant financial statements. JCI Ltd initially applied to the Companies Tribunal to review and set aside the Compliance Notice, but thereafter conceded that it was unable to prepare financial statements fully compliant with IFRS in respect of the various periods specified in the Compliance Notice.
- Pursuant thereto, JCI Ltd and the CIPC engaged one another and concluded a Settlement Agreement, which resulted in JCI Ltd withdrawing its application to the Companies Tribunal.
- ✓ The settlement agreement, a first in terms of section 173 read with section 175 of the Companies Act, was made an order of court and inter-alia required: JCI Ltd to make a payment to the CIPC of an administrative fine of R1,000,000 (one million rand) for the non-compliance of the Compliance Notice and for JCI to convene a shareholders meeting to adopt a special resolution for the voluntary winding up of JCI Ltd

EMPLOYMENT LAW UPDATE



Employment Law Update

1. Victimization of workers at the workplace in relation to occupational health and safety

- OHS Directions must be adhered to by employers, but OHS inspectors have found that compliance is below 60%, and that implies that OHS inspectors will continue to monitor and possibly issue compliance notices in future.
- This publication discusses:
 - General duties of employers and self-employed persons to persons other than their employees
 - Duty to inform
 - General duties of employees at work
 - Victimization is forbidden
- *Refer to Source Document*
- ✓ **TSV Done by Lettie**

OTHER LAWS & REGULATIONS



Other Laws & Regulations

The following items are dealt with here:

1. SAICA Legal Update **Volume 15 Issues 18 & 19** – *up to 5 Nov 2021*
 - *Refer to Source Documents for detail*
 - **The Big 5:**
 - 1) The Compensation for Occupational Injuries and Diseases Act (Updating of bank details);
 - 2) The Hazardous Substances Act (Draft lead paint and coating material regulations);
 - 3) The Pension Funds Act (Draft asset spreading requirements);
 - 4) The Protection of Personal Information Act (Draft regulations); and
 - 5) The Tax Administration Act (Administrative non-compliance penalties).

Other Laws & Regulations

(continued)

2. POPIA_Security compromise notification

➤ *Refer to Source Document*

- In terms of section 22 of the Protection of Personal Information Act No. 4 of 2013 (POPIA), where there are reasonable grounds to believe that the personal information of a data subject has been accessed or acquired by any unauthorised person, the responsible party must notify the Information Regulator (Regulator) and the data subject, unless the identity of such data subject cannot be established.

3. Amendments to POPIA Regulations

➤ *Refer to Source Document*

- Submission of comments was extended to 15 Nov 2021
- Contains new forms when communicating with InfoReg SA

Other Laws & Regulations

(continued)

4. Companies Amendment Bill 2021 – Amendment of Section 45

- The Department of Trade, Industry and Competition (DTIC) published the Companies Amendment Bill, 2021 (Bill) for public comment on 1 October 2021. The Bill is the second draft of the Companies Amendment Bill which was published in September 2018 (2018 Draft) which, if passed, will represent the first set of substantive amendments to the Companies Act 71 2008 (Act) since it came into effect on 1 May 2011.
- <https://www.cliffedekkerhofmeyr.com/export/sites/cdh/en/news/publications/2021/Corporate/Downloads/Corporate-Commercial-Alert-13-October-202.pdf>
- The **amendment to section 45** of the Companies Act is of particular interest.
 - reducing the regulatory burden placed on companies and providing for a more efficient corporate governance which is in line with the objects and purpose of the Companies Act.

Other Laws & Regulations

(continued)

Co Amendment Bill: **Proposed changes to Section 45**

- Clause 11 of the Draft Amendment Bill 2021 proposes the following amendments to section 45:
 - Deleting the original heading of section 45 which referred to “Loans or other financial assistance to directors” and substituting it with “Financial assistance”.
 - Inserting a new sub-section (2A) which states, “The provisions of this section shall not apply to the giving by a company of financial assistance to, or for the benefit of its subsidiaries”.
- The change in the heading reflects a more accurate representation of the section as it not only deals with financial assistance to directors, but also extends to prescribed officers and certain juristic persons.

Other Laws & Regulations

(continued)

5. Directors: Increased obligations and potential exposure to liability as set out in the Companies Act

➤ *Refer to Source Document*

- Directors need to be aware of the increased obligations and potential exposure to liability as set out in the Companies Act. Directors should also consider the level of insurance required to provide cover for potential claims.
- Directors who allow companies to trade in breach of their newly constituted duties of good faith, or in situations of financial distress, or in insolvent circumstances, must recognise that such trading may be the subject of examination either by a business rescue practitioner or, if the company is placed into liquidation, at insolvency inquiries in the post liquidation period.
- Directors should therefore undertake a frank and realistic review of the manner in which their companies trade. This will be essential to avoid personal liability

✓ **TSV Done by Lettie**

Other Laws & Regulations

(continued)

COIDA Update:

1. **Mandatory Covid-19 Vaccinations in the Workplace: Compensation for Injuries or Death**

➤ *Refer to Source Document*

- The Compensation Fund Commissioner published a notice ('the notice') in terms of the Compensation for Occupational Injuries and Diseases Act (COIDA), in terms of which employees, who suffer side effects, including injuries, illness or death, as a result of receiving a COVID-19 vaccine, may now claim compensation from the Compensation Fund

✓ **TSV to be done by Lettie**

Other Laws & Regulations

(continued)

COIDA Update (continued):

2. Notice on banking information requirements for Occupational Injuries and Diseases related claims released for comment

➤ *Refer to Source Document*

- Notice 615: The Compensation Commissioner issued a notice on banking information requirements in terms of section 6A (b) of the COID Act 130 of 1993 as amended for public comments due by 19 December 2021.

3. Notice on Notice on updating of banking details Occupational Injuries and Diseases related payments

➤ *Refer to Source Document*

- Notice 616: The Compensation Commissioner issued a notice on Notice on updating of banking details Occupational Injuries and Diseases related payments for public comments due by 19 December 2021.

TAXATION UPDATE



Taxation Update

➤ *Each item is available to you as a Source Document*

The following items are dealt with here:

- **Guides (new, updated & issued):**
 1. Draft Guide to the Voluntary Disclosure Programme
 - 20 Oct 2021
 - Due date for public comment: 10 December 2021
 - The VDP is intended to encourage taxpayers to voluntarily disclose tax defaults. This draft guide provides general guidance on the VDP.
 2. How to Complete the Registration Amendments and Verification Form RAV01
 - 22 Oct 2021
 - guide updated with the latest information on the inclusion of Notice of Registration for Companies and Trusts Income Tax and PAYE (inclusive of SDL and UIF).

Taxation Update *(continued)*

- **Guides updated and issued (continued):**
 3. Guide on How to submit a dispute via eFiling has been updated with the extension of Covid-19 PAYE and ETI information
 - 29 Oct 2021
 - guide updated
- **Binding Rulings (Private/Class/General) issued:**
 1. BGR 57 – Whether the term “consideration” includes an amount of transfer duty for the purposes of calculating a notional input tax deduction on the acquisition of second-hand fixed property

Taxation Update *(continued)*

- **Notices and other publications issued:**

1. Amended List of Physical Impairment or Disability Expenditure

- Effective 1 March 2020
- *Refer to Media statement <https://www.sars.gov.za/media-release/physical-impairment-or-disability-expenditure-prescribed-by-the-commissioner/>*

2. Update on share valuations for Estate Duty

- The Commissioner must approve the valuation of shares held by the deceased person in unlisted companies/close corporations or shareblock companies at the time of death.
- For the valuations to be done, valuation packs together with the Valuation Pack Checklist, must be provided to the Share Valuations Team at the following address: estatesharevaluations@sars.gov.za.
- More info available on items to take note of as well as the requirements for each type of valuation pack.
- *For more information, see the Estate Duty webpage*

Taxation Update *(continued)*

- **Notices and other publications issued (continued):**

3. Businessman gets 5-year jail term for VAT fraud

- A businessman who used false tax invoices in the calculations of VAT Output and Input tax was sentenced to five years direct imprisonment for fraud this week. See the media release <https://www.sars.gov.za/media-release/businessman-gets-5-year-jail-term-for-vat-fraud/>

4. Submitting an application for Tax Exemption

- See webpage <https://www.sars.gov.za/businesses-and-employers/tax-exempt-organisations/>

5. SARS tackles non-compliant PPE companies

- <https://www.sars.gov.za/media-release/sars-tackles-non-compliant-ppe-companies/>

Taxation Update *(continued)*

- **Notices and other publications issued (continued):**
 6. Enhanced Notice of Registration functionality on eFiling
 - The current Notice of Registration functionality for PIT and VAT has now been extended to include CIT, PAYE and Trusts. eFilers can now access their Notices of Registration for all tax types online
 - <https://www.sars.gov.za/about/sas-tax-and-customs-system/efiling-system/>
 7. Updated e@syFile Employer version released
 8. New e@syFile Employer version released
 9. An upgraded e@syFile™ Employer version 7.1.9 was released

Taxation Update *(continued)*

- **SARS Scams**

1. Possible refunds

- o <https://www.sars.gov.za/wp-content/uploads/Docs/Scams/SARS-SCAM-303-Refund-checker-26-October-2021.pdf>

Court cases: *Refer to* <https://www.sars.gov.za/Pages/Whats-New.aspx>

- ❖ 7 Tax Court cases <https://www.sars.gov.za/legal-counsel/dispute-resolution-judgments/tax-court/tc-2022-2020/>
- ❖ 14 High Court cases <https://www.sars.gov.za/legal-counsel/dispute-resolution-judgments/high-court/hc-2022-2020/>
- ❖ 1 SCA case re Customs & Excise Act
 - CSARS v Glencore Operations SA (Pty) Ltd (462/2020) [2021] ZASCA 111; [2021] 4 All SA 14 (SCA) (10 August 2021)
 - <https://www.sars.gov.za/legal-counsel/dispute-resolution-judgments/supreme-court-of-appeal-sca/sca-2022-2020/>

REGULATOR NEWS



Regulator News

The following items are dealt with here:

- **SAICA press releases & other publications:**
 1. None
- **IRBA press releases & other publications:**
 1. IRBA News #55 – *July to September 2021*
 - *Refer to Source Document*
- **Companies Tribunal:**
 1. Companies Tribunal Quarterly Newsletter: Bulletin Volume 2 – *July to September 2021*
 2. 11 Decisions reached on cases heard (*3 Name disputes, 3 Exemptions, 4 AGM, 0 Directorship disputes, 1 Review*)
 - *Refer to Source Document*

Regulator News *(continued)*

- **SAIBA press releases & other publications:**
 - CFO Talks (CFO Talks™ is devoted to sharing ideas and conversations between CFOs. It is a platform which facilitates insightful and powerful talks relevant to CFOs) <https://cfotalks.com/>
 - Accounting Weekly (weekly newsletter) <https://accountingweekly.com/>
- **LSSA:**
 - *Refer to Source Document*
 - 1. LSSA published POPIA guide for attorneys

Regulator News *(continued)*

- **Information Regulator:**

- *Refer to Source Documents*

1. PAIA Guide

- Guide on how to use the Promotion of Access to Information Act, translated into all 11 languages

2. Information Regulator's PAIA Manual prepared in terms of Section 14

- To be read together with the PAIA Guide

3. New Email addresses

- Specific email addresses have been created for different purposes, including the manual registration of Information Officers, general compliance in relation to POPIA and PAIA, general enquiries and for the lodging of complaints

4. How to handle POPIA complaints

- Rules of procedure relating to the manner in which a complaint must be submitted and handled by the Information Regulator (includes Form 20- Request for an Internal Review)

5. Registration of Information Officer Portal is still unavailable

Regulator News *(continued)*

- **CSOS:**

- *Refer to Source Documents*

- ❑ CSOS issues 3 Circulars:

- 1. CSOS Circular on opening of Body Corporate bank account

- CSOS released circular on opening of Body Corporate bank account in terms of the Sectional Titles Schemes Management Act.

- 2. CSOS Circular of Special and Unanimous Resolution

- CSOS released circular to provide guidance on the approval of Special and Unanimous Resolution process

- 3. Registration of Community Scheme and Submission of Annual Returns

- CSOS released circular to provide guidelines for registration of community schemes and the submission of annual returns

Regulator News *(continued)*

- **CGSO:**

- *Refer to Source Document*

1. 8 Consumer Laws you should know before buying anything during Black Friday
2. CONSUMER ALERT OCT 2021: Suppliers most likely to take your money and run
3. CGSO Newsletter issued Quarter 3 of 2021 – July to September 2021

- **FSCA publications & press releases:**

1. FAQs about Registration with FIC
 - This document focuses on the registration obligations set out in section 43B of the FIC Act

- *Refer to Source Document*

2. Numerous Warnings issued to the public against fraudulent FSPs

- <https://www.fsca.co.za/Pages/Media-Releases.aspx>

Regulator News *(continued)*

- **SARS:**

1. Latest Tax Practitioner Newsletter

- The latest Tax Practitioner Connect Newsletter issue 26 deals with a few topics including Commissioner appeals to non-compliant practitioners to become compliant, Task team established to combat fraudulent alterations of taxpayer eFiling profiles, SARS to commence with reporting unlawful use of trademark, Posting of VAT201 returns discontinued and SARS ups the ante regarding PAYE non-compliance.
- For this and more, see the Tax Practitioner Connect Newsletter issue 26 <https://www.sars.gov.za/businesses-and-employers/my-business-and-tax/tax-practitioners-connect-issue-25-october/>

GENERAL ANNOUNCEMENTS & NEWSY ARTICLES



Media articles

Business rescue and Employee rights

- What happens to employees when their employer is placed into business rescue?
- Employees who are employed by a company that is placed into business rescue remain employed and remain entitled to protection from unfair dismissal, unfair labour practice and other rights guaranteed by the LRA, and also for their employer to continue complying with the BCEA. Additionally, all other labour laws and protections remain in full effect

The growing threat of ransomware

- Ransomware has been in the news a lot recently, but what is it? How can you avoid being a victim? And should you pay the ransom if you are attacked?
- The basics of ransomware

The legal dangers of a side hustle

- It is especially important to be mindful of the Consumer Protection Act and the Protection of Personal Information Act (POPIA) when transacting with members of the public, whether through your own website, an online marketplace, or even over WhatsApp.

QUESTIONS





for your participation!