

# *The Contemporary Gazette*

*relevant new legislation for your business*



## Legal Update Volume 16 Issue 19, 8 November 2021

### This Update

This newsletter overviews new relevant National laws up to **5<sup>th</sup> November 2021**.

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## General

### 1. NOTABLE ONE LINERS

#### [Auditing Profession Act \(IRBA regulatory strategy\)](#)

The regulatory strategy for IRBA is available from IRBA.

#### [Civil Aviation Act \(COVID-19\)](#)

[COVID-19 air services directions](#) revised for international and domestic flights; and for aviation training organisations and aviation security training organisations.

#### [Compensation for Occupational Injuries and Diseases Act \(Updating of bank details\)](#)

Notice gazetted on [documents required for the updating of banking details](#) for payment of occupational injuries and diseases related claims and claims-related expenses.

#### [Compensation for Occupational Injuries and Diseases Act \(Draft banking procedure\)](#)

Draft notice gazetted on banking information requirements for occupational injuries and diseases related claims that states, [amongst others](#), the Compensation Fund will not accept banking details and nominated bank accounts of agents and other representatives. Comment deadline 60 days from 19 October 2021.

#### [Compensation for Occupational Injuries and Diseases Act \(COVID-19\)](#)

Notice gazetted on [compensation for covid-19 vaccination side-effects](#) where an employee is required by the employer to receive vaccination as an inherent requirement of employment or where vaccination is required based on the occupational health and safety risk assessment conducted by the employer.

#### [Electronic Communications Act \(Call termination\)](#)

The discussion document regarding the [review](#) the pro-competitive conditions imposed on relevant licensees, and the markets for wholesale voice call termination, is available from ICASA.

### Financial Advisory and Intermediary Services Act (Representative register)

FAIS communication 19 of 2021, available from the FSCA, notifies FSPs of changes to the electronic submission of representative register, including provision for a testing environment and for the phasing out of the previous format by 31 March 2022.

### Hydrographic Act (Commencement)

29 October 2020 has been proclaimed, retrospectively, as the commencement date for [the Act](#).

*Note: The Act provides for, amongst others, the sale of Hydrographic Office nautical publications and charts; Hydrographer access to land, seashores, enclosed places or reserves on land or ocean and internal waters; and information submission by gazetted entities regarding certain navigational dangers.*

### Income Tax Act (International transactions)

Reminder that a 1 January 2022 amendment is currently set for [section 31](#) (tax payable in respect of international transactions to be based on arm's length principle).

### Legal Practice Act (Council rules)

Schedule 8 of the [rules](#), available from the Council, amended to reflect Illustrative Auditor's Assurance Report (Unmodified Opinion); Illustrative Auditor's Assurance Report (Qualified Opinion); Legal Practitioner's Annual Statement on Trust Accounts; and Supplementary Information requested by Council.

### National Environmental Management Act (Department of Tourism)

The environmental implementation plan for the Department of Tourism (2020 to 2025) is available from the Department.

### National Environmental Management Biodiversity Act (COVID-19)

[COVID-19 biodiversity auction directions](#) repealed.

### National Environmental Management Biodiversity Act (Threatened ecosystems)

The draft revised list of ecosystems that are threatened and in need of protection is available from the Department.  
Comment deadline 30 days from 5 November 2021.

*Note: Related law include, amongst others, the [Marine Living Resources Act](#); the [National environmental Management Integrated Coastal Management Act](#); the [National Environmental Management: Protected Areas Act](#); the [National Forests Act](#); the [National Heritage Resources Act](#); and the [National Water Act](#).*

### National Ports Act (COVID-19)

[COVID-19 sea ports directions](#) revised for passenger vessels visiting SA sea ports; and for commercial seaports, foreign crew changes, passenger vessels on international voyages calling at sea ports.

### Postal Services Act (Customer care)

Amendments will be made to the customer care standards regulations 90 days from 29 October 2021 to, [amongst others](#), revise the care standards and complaints escalation process; and require that records of complaints received must be kept for 5 years.

### Preferential Procurement Act (Reminder)

Reminder that in case number 1050/2019 the Supreme Court of Appeal ordered that the [Preferential Procurement Regulations 2017](#) are inconsistent with the [Preferential Procurement Policy Framework Act](#), 5 of 2000, and are invalid, and suspended the declaration of invalidity for 12 months from 2 November 2020.

### Protection of Personal Information Act (Draft regulations)

Revisions proposed to the POPI procedural regulations to, [amongst others](#), objections to processing; correction or deletion requests; information officer manual duties; data subject consent requests; complaint submissions; fines; forms; and transitional measures). Comment deadline now 15 November 2021.

*Note: Complaint will be defined as a [section 74](#) complaint matter reported; a [section 92](#) enforcement committee referred complaint; or a matter reported or referred to the Information Regulator in terms of other legislation that regulates the mandate of the Information Regulator - certain [Promotion of Access to Information Act](#) complaints may fall within this category.*

*Further note: Proposals include that a responsible party must explicitly bring to the attention of the data subject their right to object which is distinct from any other information.*

*Final note: Proposals also include that if a complaint lodged with the Information Regulator contains any information protected under the [Protected Disclosures Act](#), the complainant will be protected by that Act.*

## Public Holidays Act

1 November 2021 has been declared a public holiday in terms of the [Public Holidays Act](#).

## Sectional Titles Act (Amendment Bill)

The Amendment Bill 2020 proposes, [amongst others](#), developer duties prior to the establishment of a body corporate, and lease of part of common property requires consent of holders of registered real rights.

## South African Police Services Act (Search and seizure)

The Constitutional Court (CCT136/20) revised the [section 13](#) provision relating to searches within areas cordoned off by the National or Provincial Commissioner to restore public order or to ensure the safety of the public in a particular area.

## South African Schools Act (COVID-19)

[COVID-19 schools directions](#) revised for entry to premises; and for sport and extracurricular activities.

## Standards Act

New, proposed, amended, and withdrawn [standards](#) gazetted for 22 and 29 October 2021.

## Tax Administration Act (Administrative non-compliance penalties)

As from 1 December 2021 a natural person will be subject to revised [fixed amount penalties](#) for failure to submit an income tax return, including having 1 outstanding income tax return for years of assessment on or after 1 March 2020.



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## 2. PENSION FUNDS ACT (ASSET SPREADING REQUIREMENTS)

The [proposed amendments to the asset spreading requirements](#) have been revised - the amendments relate to the table of specified assets and to:

- (i) Hedge funds: A fund may invest in a hedge fund, subject to regulation 28(3)(d) and prescribed conditions;

*Note: Hedge fund is defined as an arrangement in pursuance of which members of the public are invited or permitted to invest money or other assets and which uses any strategy or takes any position which could result in the arrangement incurring losses greater than its aggregate market value at any point in time, and which strategies or positions include but are not limited to leverage or net short positions.*

- (ii) Infrastructure exposure: The aggregate exposure by a fund to all issuers in respect of infrastructure, including the aggregate exposure in respect of the rest of Africa, excluding South African government and government guaranteed instruments, may not exceed 45%, of the aggregate fair value of the total assets;

*Note: Infrastructure is defined as any asset class that entails physical assets constructed for the provision of social and economic utilities or benefit for the public.*

*Further note: Also see the proposed look-through amendment to regulation 28(4)(c).*

- (iii) Issuer/entity exposure: The aggregate exposure by a fund per issuer/entity must not exceed 25% of the aggregate fair value of the total assets of the fund, excluding government and government guaranteed instruments;

- (iv) Crypto-asset prohibition: A fund may not invest in crypto-assets directly or indirectly; and

*Note: Crypto-asset is defined as a digital representation of value that is not issued by a central bank, but is capable of being traded, transferred or stored electronically by natural and legal persons for the purpose of payment, investment and other forms of utility; applies cryptographic techniques and uses distributed ledger technology.*

- (v) Reporting infrastructure assets: Infrastructure assets must be reported, with respect to the top 20 holdings, in the prescribed format.

Comment deadline 12 November 2021.



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## Safety

### 3. HAZARDOUS SUBSTANCES ACT (LEAD PAINT)

The [draft group 2 declaration](#), read with the [draft regulations](#), for lead paint and coating materials, propose, amongst others:

- (i) Expanding application: Paint or a similar coating material used for any purpose with a total lead content above 0.009% (90 ppm) or 90mg/kg (calculated as lead metal), based on the weight of the total non-volatile content (of the paint or weight of the dried paint film);

*Note: The [current group 1 declaration](#) applies to paint containing lead or lead compound used for decorating with a total content 0.06 percent (600 ppm) and above, based on total non-volatile content.*

*Further note: Paint will be defined as a pigmented or unpigmented coating material which, when applied to a substrate, form an opaque dried film having protection, decorative or specific technical properties.*

*Final note: Coating material will be defined as a product, in liquid, paste or powder form, that, when applied to a substrate, forms a layer possessing protection, decorative and/or other specific properties.*

- (ii) Moving to group 2: [Section 3 sale of group 1 substance](#) declaration and exceptions will no longer apply, as all lead paints and coating materials will be declared a group 2 substance;

*Note: Although the term does not seem to appear elsewhere in the draft regulations, children's product is defined as a consumer product designed or intended primarily for children which includes, but is not limited to the following children's products: furniture designed for use by children; gates and other enclosures used for confining a child; children's toys and play equipment; school stationary supplies; and children's jewellery.*

- (iii) Requiring testing: Manufacturers and importers of paint or similar coating materials, with the exception of white water-borne coating materials containing non-lead white pigments, must after the [effective date](#), before supply, test the lead content of the first production batch or lot of paint or similar coating material manufactured or imported, using any accredited laboratory.

*Note: In the event of a material change, manufacturers and importers must test the lead content of the first production batch or lot of the changed paint or similar coating material.*

- (iv) Requiring certification: Manufacturers and importers of paint or similar coating materials must issue a lead content standard compliance declaration certificate for all tested manufactured and imported products;

*Note: They must keep records of all laboratory test results or analysis certificates and attestations of how the testing was done for 5 years - companies should note the Companies Act 7 year+ requirement.*

(v) Compliance monitoring: Analysts must use prescribed internationally recognised sampling procedures, quality assurance principles and analytical methods;

(vi) Labelling and ports of entry: All paint or similar coating materials may only be imported through prescribed ports of entry; and all paint or similar materials offered for sale must contain the prescribed labelling; and

(vii) Prohibitions: Including that paints or similar surface coating materials that do not conform to the regulations may not be manufactured, offered for sale, distributed or imported or allowed to be donated or exported for sale.

*Note: Related laws that may apply, in addition to the draft regulations, will include, amongst others, the Consumer Protection Act (specifically [right to fair value, good quality and safety](#)); the Occupational Health and Safety Act (duty to provide safe premises and [lead regulations](#)); the Customs and Excise Act (with regard to embargoes and the examination, control and disposal of imported substances); the Foodstuffs, Cosmetics and Disinfectants Act ([objects packed in foodstuffs for children](#) and [maximum levels of metals in foodstuffs](#)); the National Health Act ([standards for premises](#)); and Children's Act ([best interests of child paramount](#)).*

Comment deadline: A very reasonable 3 months from 29 October 2021.



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