

The Contemporary Gazette

relevant new legislation for your business



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This Update

This newsletter overviews new relevant National laws up to **10th February 2022**.

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1. NOTABLE ONE LINERS

Banks Act: Financial Sector Laws Amendment Act 2021

Once a commencement date is gazetted, the Amendment Act will provide that [section 54](#) (amalgamations, mergers and arrangements) does not apply to a bank in resolution; amend [section 60](#) (directors and officers - set off provision); and repeal [sections 68](#) (winding-up), [69](#) (curator appointment of curator), and [69A](#) (investigation of affairs of bank under curatorship).

Note: Consequential changes will be made to [sections 51](#), [89A](#) and [91](#), related to the proposed repeal of the above sections.

Basic Conditions of Employment Act: Minimum wages

The minimum wages for the [contract cleaning sector](#) and for the [wholesale and retail sector](#) will be amended 1 March 2022.

Basic Conditions of Employment Act: Working time regulation threshold

From 1 March 2022 all employees [earning above](#) R224 080,48 per annum will be excluded from [sections 9](#) (hours of work); [10](#) (overtime); [11](#) (compressed week); [12](#) (averaging hours); [14](#) (meal intervals); [15](#) (rest period); [16](#) (Sunday work); [17\(2\)](#) (night work); and [18\(3\)](#) (public holidays).

Note: The threshold is also relevant to [section 9A](#) (daily wage amount), [73A](#) (claims for failure to pay any amount), and [83A](#) (presumption as to who is an employee) of the Act.

Further note: The threshold is also relevant to [section 10](#) of the Employment Equity Act (disputes concerning the chapter on unfair discrimination) .

Final note: The threshold is also relevant to [sections 198A](#) (application of temporary employment services), [198B](#) (fixed-term contracts), [198C](#) (part-time employment), and [198D](#) (provisions applicable to sections 198A to 198C) of the Labour Relations Act.

Companies Act:Financial Sector Laws Amendment Act 2021

Once a commencement date has been gazetted, the Amendment Act will amend [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 Act 2021

Once a commencement date is gazetted, the Amendment Act will amend [intervention in merger proceedings](#) to exclude Financial Sector Regulation Act [section 166S](#) resolution transactions from the application of sections 13(5)(b), 13(6), 14(1)(b), 14(2), and 16(2) of the Act.

Co-operative Banks Act:Financial Sector Laws Amendment Act 2021

Once a commencement date is gazetted, the Amendment Act will repeal [chapter 4](#) (deposit insurance fund and schemes); repeal [section 30](#) (winding up or judicial management); insert [section 30A](#) (designated institutions); and amend [section 1](#) (fund), [55](#) (Agency functions), and [80](#) (offences).

Criminal Law (S Offences and Related Matters) Amendment Act: Vulnerable persons

Draft amendments (Registrar functions; persons who must apply for a certificate; application whether particulars in register; removal of particulars; and false declarations) proposed to the [regulations for victim services, compulsory HIV testing and offender register](#), to dovetail with the proposed expansion of the Act to cover more vulnerable persons. Comment deadline 28 February 2022.

Note: [Persons who are vulnerable](#) will refer to children; persons who are mentally disabled; certain females under 25 years; certain persons 60 years or older; persons cared for or sheltered in a facility for victims of crime; and certain persons with a physical, intellectual or sensory disability.

Final note: Employers and others may also wish to revisit the past [how to save a life](#) overview, taking into consideration the planned expansion of the Act to vulnerable persons.

Criminal Procedure Act: Criminal Procedure Amendment Act 2021

The Amendment Act amended [section 154](#) to further regulate the publication of information that may reveal the identity of an accused; a witness; or a person against whom an offence has allegedly been committed, who is or was under 18 at the time the alleged offence was committed.

Disaster Management Act: COVID-19

[COVID-19 disaster regulations](#) amended (refusal of treatment and isolation; isolation of persons; shelters and sites identified by the State during the national state of disaster; forms; and essential services).

Note: As from 7 February 2022 no social distancing measures will apply in the basic education sector.

Electricity Regulation Act: Draft Amendment Bill 2022

The Draft Bill, proposes, [amongst others](#), that application may be made for a licence for the construction and operation of a generation facility; the construction and management of a transmission power system; system operation; the construction and operation of a distribution power system; the import of electricity; the export of electricity; and trading. Comment deadline 30 days from 10 February 2022.

Financial Institutions (Protection of Funds) Act: Financial Sector Laws Amendment Act 2021

Once a commencement date is gazetted, the Amendment Act [will provide](#) that [sections 5](#) (curator) and [6](#) (Authority powers) do not apply where a Financial Sector Regulation Act section 166J determination is in force.

Financial Markets Act: Financial Sector Laws Amendment Act 2021

Once a commencement date is gazetted, the Financial Sector Laws Amendment Act 2021 will amend [section 3](#) (application); [60](#) (cancellation or suspension); and [section 64](#) (market infrastructure amalgamation, merger, transfer or disposal).

Financial Sector Regulation Act: Financial Sector Laws Amendment Act 2021

Once a commencement date is gazetted, the Amendment Act [will](#) provide for further protection of depositors in banks; and for orderly resolution of banks, systemically important financial institutions, certain payment system operators, certain holding companies, and certain financial conglomerates.

Note: Bank will be [defined](#) as a bank, a branch of a bank, a mutual bank, or a co-operative bank; financial instruments (financial instruments by designated instruments) will be defined; and orderly resolution of a designated institution will be defined.

Further note: Clarification will be given that the [Act prevails](#) where there is an irreconcilable conflict with another law regarding failure or insolvency of a company or the appointment of a statutory manager, curator or similar person to a designated institution.

Final note: The administrative process taken for the resolution of a designated institution will apply, for an action covered by [section 166Z](#), instead of Promotion of Administrative Justice Act sections 3(2) and 4(1), (2) and (3) procedures.

Immigration Act: Critical skills

A [critical skills list](#) has been gazetted.

Note: Subject to any prescribed requirements, a critical skills work visa may be issued by the Director-General to an individual possessing gazetted skills or qualifications and to those members of his or her immediate family determined by the Director-General under the circumstances or as may be prescribed.

Further note: An applicant for a critical skills work visa must submit a written undertaking by the employer accepting responsibility for the costs related to the deportation of the applicant and his or her dependent family members, should it become necessary; and a police clearance certificate.

Final note: An application for a critical skills work visa must be accompanied by proof that the applicant falls within the critical skills category in the form prescribed by [regulation 18\(5\)](#).

Insolvency Act: Financial Sector Laws Amendment Act 2021

Once a commencement date is gazetted, the Amendment Act will insert [section 22A](#) (liquidation of designated institutions); and make a consequential amendment to [section 83](#) (realization of securities for claims).

Note: Corrections and updates will also be made to [section 35A](#) (transactions on market infrastructure).

Insurance Act: Financial Sector Laws Amendment Act 2021

Once a commencement date is gazetted, the Amendment Act will amend [section 52](#) (to exclude application of resolution chapter if insurer is a designated institution in terms of the Financial Sector Regulation Act).

Labour Relations Act: Essential services

Investigation launched into whether the manufacturing, supply and distribution of certain vaccines and/or biologicals; anaesthetics; antiretrovirals to treat HIV virus; immunosuppressants; Covid-19 related products; chronic medicines; and antibiotics should be designated [essential services](#).

Note: An essential services declaration means a party to a dispute is precluded from participating in a strike or lock-out and must follow a specific conciliation-arbitration approach.

Final note: Related laws to consider may include, amongst others, the [National Health Act](#); the [Medicines and Related Substances Act](#); the [Consumer Protection Act](#); the [Occupational Health and Safety Act](#); and the [Medical Schemes Act](#).

Long-term Insurance Act: Remuneration general limits

FSCA Ins Notice 2 of 2022 (available from the FSCA) exempts from [section 49](#), and [regulation 3.2\(1\)](#) and (2), any independent intermediary authorised under [section 47A](#) that performs the service of direct collection of premium (as defined in the exemption) only, insofar as it relates to accepting consideration for performing direct collection of premiums.

Note: The exemption ends 31 January 2023.

Marine Pollution (Prevention of Pollution from Ships) Act: Amendment Bill 2022

The Bill [proposes](#) technical standards for marine pollution from ships; further ship pollution specific regulations; and giving effect to annexes 4 and 6.

Mutual Banks Act: Financial Sector Laws Amendment Act 2021

Once a commencement date is gazetted, the Amendment Act will provide for [guidance notes and directives](#) (and making non-compliance with a directive by a mutual bank or auditor [an offence](#)); and for [mutual banks in resolution](#).

Note: The Amendment Act will also repeal [sections 29\(4\)\(b\)](#); [73](#) (judicial management); [74](#) (voluntary winding-up); [75](#) (winding-up); [76](#) (judicial manager/liquidator); [77](#) (dissolution); [80](#) (distribution of winding-up surplus); and [81](#) (curator).

National Minimum Wage Act: 1 March 2022

The [national minimum wage](#) will be amended on 1 March 2022 to R23,19 per hour (except for expanded public works programme workers which will be R12,75 per hour; and except for [learnership allowances](#) which will be determined according to NQF levels).

Note: Schedule 1 gives specific definitions to domestic worker; farm worker; and expanded public works programme.

Final note: Schedule 2 gives specific definitions to allowance; credit; learner (including apprentice); and NQF level.

National Road Traffic Act: Regulations

Regulations prescribing the [manner of electronic registration of a motor vehicle](#), and further prescribing the [duty of a title holder and owner of a motor vehicle where such title holder or owner changes](#), commenced 14 February 2022.

Short-term Insurance Act: Remuneration general limits

FSCA INS Notice 1 of 2022 (available from the FSCA) exempts from [section 48](#) and [regulation 5.1\(1\) and \(2\)](#) an independent intermediary authorised under [section 45](#) that performs the service of direct collection of premium

(as defined in the exemption) only, insofar as it relates to accepting consideration for performing direct collection of premiums.

Note: The exemption ends 31 January 2023.

South African Reserve Bank Act: Financial Sector Laws Amendment Act 2021

Once a commencement date is gazetted, the Financial Sector Laws Amendment Act 2021 will enable SARB form a company for the [performance of its resolution functions](#) in terms of the Financial Sector Regulation Act.

South African Schools Act: COVID-19

Revised [COVID-19 basic education directions](#) gazetted for all schools, hostels and offices; learners; officials; third parties; and governing bodies and school boards (relating to entry; return; special educational needs; sport; extracurricular activities; general safety measures; symptom screening; sanitizers, disinfectants and masks; and learning recovery).

Note: The directions define third parties as persons who do not fall under the definition of an official, but may access a school or offices, including, but not limited to volunteer workers; persons appointed in terms of the Expanded Public Works Programme and as community development workers; food handlers; chief food handlers; parents of learners attending the school; and persons delivering goods or providing services to the school.

Further note: Aftercare facilities managed by or operating at a school, and in education support centres, may reopen if they comply with the health, and safety measures and requirements on COVID-19, referred to in the DBE Standard Operating Procedures and the DBE Guidelines.

Final note: A school must send out a notice to all parents informing them that they must not send learners to school if the learners have any of the observable symptoms associated with COVID-19, including fever, cough, sore throat, redness of eyes and shortness of breath or difficulty in breathing, body aches, loss of smell or loss of taste, nausea, vomiting, diarrhoea, fatigue or weakness



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