



The Contemporary Gazette

relevant new legislation for your business



SOUTH AFRICAN INSTITUTE OF
PROFESSIONAL ACCOUNTANTS™

 YOUR WEALTH

SAIPA Your Law : Volume 14 Issue 9, 10 June 2019

This newsletter

This newsletter overviews new relevant National laws up to **10th June 2019**. Log-in to www.gazette.co.za, peruse the list and follow the hyperlinks to laws that interest you. Please note that **[words in bold brackets]** in www.gazette.co.za show proposed deletions, and underlined words in www.gazette.co.za show proposed insertions - this allows you to see current and planned requirements at the same time, and helps with giving context to changes/proposed changes.

Please note that you can keep up to date, in-between newsletters, by visiting latest updates.

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SAIPA Technical will keep you up to date with these changes so login and read the SAIPA YOUR LAW. Please see the [last page for log-in details](#). Please provide SAIPA with your membership number when updating your details.

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General

1. NOTABLE ONE LINERS

Animals Protection Act / Performing Animals Protection Act / Private Security Industry Regulation Act

The Private Security Industry Regulation Act draft regulations relating to working animals in the private security industry is available from the Department of Police. Comment deadline 4 weeks from 31 May 2019.

Auditing Profession Act

Assurance fees 2019/2020 payable for an inspection or review undertaken by the Regulatory Board in terms of [section 47](#), have been gazetted.

Broad-based Black Economic Empowerment Act

Amendments will be made to the general code [statements 000, 300](#), and [400](#), and several [definitions](#), 6 months from 31 May 2019.

Competition Act

The terms of reference for the [land based public passenger transport market inquiry](#) has been amended so that the completion date for the inquiry is now 31 July 2019.

Electronic Communications Act

Comment deadline on the draft findings document on the [inquiry into subscription television broadcasting services](#) (available from ICASA) has been extended to 27 August 2019.

Fertilizers, Farm Feeds, Agricultural Remedies and Stock Remedies Act

- (i) Comment deadline extended to 8 weeks from 31 May 2019 on the [draft regulations regarding stock remedies](#) (covering registration; labelling, containers and advertisement; product class and extra-label use; manufacturing establishments; sampling and permissible deviations; handling, storage and disposal; imports and appeals) have been gazetted.

(ii) Proposal made to prohibit the use of [nitrofurans](#), [nitromidazoles](#), [carbadox](#) and [diethylstilbestrol](#) in [food producing animals](#). Comment deadline 4 weeks from 31 May 2019.

Foodstuffs, Cosmetics and Disinfectants Act

(i) New [reduced total sodium levels](#) will apply as from 30 June 2019 for [bread](#), all breakfast cereals and porridges, all [fat spreads](#) and [butter spreads](#), [ready-to-eat savoury snacks](#), flavoured potato crisps, dry savoury powders, dry gravy powders and savoury sauce powders, and dry savoury powders with dry instant noodles to be mixed with a liquid.

(ii) [Reduction in sodium](#) regulations amended so that [processed meat](#) (classes 1, 4 and 5 where products in category 5 relates to cured as per [Annexure 1](#)) must comply with the corresponding reduced [total Sodium](#) levels of 1150mg Na by 30 April 2020; [processed meat](#) (classes 2, 3 and 5 where products in category 5) must comply with the corresponding reduced [total Sodium](#) levels of 650mg Na by 30 April 2020; and [raw-processed meat sausages](#) (all types) and similar products must comply with the corresponding reduced [total Sodium](#) levels of 600mg NA by 30 April 2020.

(iii) Reminder that [regulation 3\(11\)\(b\)](#) (certificate of acceptability applies to all food premises), [regulation 6\(7\)](#) (requirements for bulk milk tank equipment provided on a food premises for selling milk to the consumer in a container provided by the consumer or by the person in charge of the food premises) and [regulation 10\(1\)\(a\)](#) (person in charge of food premises must be suitably qualified or otherwise adequately trained in the principles and practices of food safety and hygiene, as appropriate, and the training must be accredited or conducted by an inspector, where applicable), of the [general hygiene requirements for food premises and the transport of food](#), commence 12 months after 22 June 2018.

Labour Relations Act

[Accredited councils](#): Metal and Engineering Industries Bargaining Council, Bargaining Council for the Furniture Manufacturing Industry of the Western Cape, Bargaining Council for the Food Retail, Restaurant, Catering and Allied Trades, National Bargaining Council for the Sugar Manufacturing Refining Industry, Bargaining Council for the Diamond Cutting Industry (SA), National Bargaining Council for the Chemical Industry, Bargaining Council for the Canvas Goods Industry, Furniture Bargaining Council, and Public Health and Social Development Sectoral Bargaining Council.

Local Government Municipal Finance Management Act

Municipal cost containment regulations (use of consultants, vehicles, travel, subsistence, domestic accommodation, credit cards, sponsorships, events, catering, communication, conferences, meetings, study tours, and other expenditure) commence 1 July 2019

Long-term Insurance Act

Reminder that policyholder protection [rule 17](#) (claims management) and [rule 18](#) (complaints management), in so far as it relates to group schemes, will commence on 1 July 2019.

Magistrates Courts Act

The following [rules](#) will be amended on 1 July 2019: [Rule 9](#) (service of process, notices and other documents); [Rule 19](#) (exceptions and applications to strike out); [Rule 55 \(applications\)](#); and [Annexure 2](#) (Tables of costs).

Medicines and Related Substances Act

Amendments have been proposed to the [general regulations](#) (to clarify that the term genetically modified organisms is meant, to clarify that headings as determined by the Authority is meant, and to replace annexure references to 'Phytotherapy' with 'Ayurveda'). Comment deadline 3 months from 30 May 2019.

National Health Act

[Code of Conduct for Inspectors](#) (in terms of the [procedural regulations](#) pertaining to the functioning of the Office of Health Standards Compliance and handling of complaints by the Ombud) gazetted.

Standards Act

New, proposed, amended, and withdrawn [standards](#) have been gazetted for 7 June 2019.

Note: Generally related laws may in certain circumstances involve standards, for example, [section 55](#) of the Consumer Protection Act, the [Occupational Health and Safety Act](#), the [National Regulator for Compulsory Specifications Act](#), the [National Health Act](#), the [Agricultural Products Standards Act](#), and/or the [Competition Commission and SABS MoU](#).

Superior Courts Act

(i) The following [uniform rules](#) will be amended or introduced on 1 July 2019: [Rule 30A](#) (non-compliance with rules); [Rule 32](#) (summary judgment); [Rule 36](#) (inspections, examinations and expert testimony); [Rule 37](#) (pre-trial conference); [Rule 37A](#) (judicial case management); [Rule 68](#) (tariff for sheriffs); and Rule [forms](#).

(ii) The [Supreme Court of Appeal rules](#) will be amended 1 July 2019 to update references to the Superior Courts Act, to provide for application and referral for reconsideration by the President, and to provide for directives for certain section 18 appeals.



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General

2. FRAUD AND GENERALLY APPLICABLE LAWS/ LEGAL REGISTER / REGULATORY UNIVERSE

At times, society seems to hold a permeative dismissive mindset regarding fraud.

There may be any number of reasons why we choose to ignore fraudulent activities, such as 'benefiting' from fraudulent behaviour, not understanding fraud, believing that the culture of fraud is all-pervasive and there is nothing we can do, or placing it too low on our regulatory radar.

Fraud is both an ethical and a compliance consideration.

The purpose of this overview is simply to place the focus on fraud higher on the over-populated regulatory radar, by noting touchpoints with some of the laws that are generally applicable to any business (King Code), the laws likely to appear in a legal register (ISO), and/or the laws likely to be considered in a regulatory universe.

Fraud

www.saps.gov.za defines the common law offence of fraud as the unlawful and intentional making of a misrepresentation which causes actual prejudice or which is potentially prejudicial to another.

It seems, in other words, that fraud happens when I try to mislead you on purpose to cause you harm, and my action cannot somehow be justified by law.

Some touch points to consider

0. Constitution of the Republic of South Africa

Application note: [Supreme law](#) of RSA - law or conduct inconsistent with it is invalid)

*Touch point example: [Acknowledges common law](#) (such as the duty of an employee to act in the legitimate interest of the employer, or the **common law offence of fraud**) and balances rights and [limitation of rights](#).*

1. Basic Conditions of Employment Act, Regulations and Sector-specific determinations

Application note: Generally regulates employees' workday, off time, leave, contract, pay and termination.

Touch point example: An employee claiming sick leave or family responsibility leave when not entitled thereto.

2. Broad-Based Black Economic Empowerment Act and Regulations

Application note: Expectations when interacting with government departments and regulators.

Touch point example: [Fronting](#), or falsely claiming to have certain skills or expertise or knowledge - also see the [National Qualifications Framework Act](#).

3. Companies Act and Regulations

Application note: Relevant for non-companies too - for example Close Corporations Act references such as [disqualification from management](#), and Companies Act [section 159](#) protected disclosures.

Touch point example: A company [must not](#) carry on its business recklessly, with gross negligence, with intent to defraud any person or for any fraudulent purpose.

4. Competition Act and Regulations

Application note: When considering a merger, when drawn into a market inquiry, or when believing one may non-competitively affect relationships with competitors, suppliers, customers, conditions, markets, tenders, prices, or facilities, or enforce certain exclusionary acts.

Touch point example: [Collusive tendering](#).

5. Consumer Protection Act and Regulations

Application note: Generally applies whenever a service or product is provided to an individual, or else an entity with a threshold below R2m - exceptions includes financial sector laws covered by the [Financial Sector Regulation Act](#))

Touch point example: [False, misleading or deceptive representations](#).

6. Copyright Act and Regulations

Application note: Starting point for considering intellectual property rights. Apart from the duty in intellectual property laws to respect such property, one should also consider other laws that directly or indirectly require respect for intellectual property, including the Companies Act [duty not to act recklessly, grossly negligently or fraudulently](#) and the [Counterfeit Goods Act](#).

Touch point example: [Plagiarism](#).

7. Electronic Communications and Transactions Act and Regulations

Application note: For electronic transactions, and, for now, also when using personal information gained from an electronic transaction.

Touch point example: [Computer-related extortion, fraud and forgery](#).

8. Employment Equity Act and Regulations

Application note: When employer and employee or potential employee interact, or employees interact with each other.

Touch point example: Claiming that a matter of harassment is being investigated and addressed is being addressed in terms of the [relevant code](#) and employer policy, when this is not the case.

9. Expropriation Act and Regulations

Application note: To be considered if the business owns immovable property, has immovable property rights or has intellectual property rights.

Touch point example: Claiming [expropriation for public purposes](#) when the primary reason is not in fact related to public purposes.

10. Financial Intelligence Centre Act and Regulations

Application note: All entities are required to comply with [section 29](#) suspicious and unusual transaction reporting and record-keeping duties, and [financial sanctions requirements](#). Further reporting and record-keeping requirements apply to [accountable institutions](#), [reporting institutions](#) and [supervisory bodies](#).

Touch point example: Willfully giving [false information to an inspector](#).

11. Immigration Act and Regulations

Application note: When employing a foreigner or handling the actual or purported passport, travel document or ID, or assisting a foreigner. Further duties apply to certain business within the education, financial, health, hospitality, property and transport sectors.

Touch point example: [Offence](#) for any public servant to provide false or intentionally inaccurate or unauthorised documentation or benefit to an illegal foreigner, or otherwise facilitate such illegal foreigner to disguise his or her identity or status.

12. Labour Relations Act and Regulations

Application note: The Act may be triggered when one is involved in an allegation of unfair dismissal, in a transfer of an employee, insolvency, in a temporary or fixed term employment contract or when requested to provide information under the law. Also, the Act may apply in other instances where there is a trade union involved in the business.

Touch point example: Job applicant making false claims about job qualifications.

13. National Credit Act and Regulations

Application note: Limits certain credit checks. Certain parts, such as incidental credit agreements, may be triggered if the business intends to charge interest for late payment or if a fee is defrayed until a later date but then at an increased amount, or to include [credit life insurance cover](#). Other parts apply to a business specifically involved in aspects of credit provision as an ongoing concern.

Touch point example: [Consumer credit information reports](#) for purposes of fraud detection and fraud prevention services.

14. National Environmental Management Act and Regulations

Application note: Owner, controller or right holder of certain land or premises must take reasonable measures to prevent significant pollution or degradation from occurring, continuing or recurring. Directors or close corporation members may be jointly and severally liable for any negative impact on the environment. [Protection of workers](#). General [duty to report and manage environmental incidents](#), and to [protect environmental protected disclosures](#). Environmental impact assessments are required before certain activities may be commenced with. Specific environmental duties also apply to specific types of businesses.

Touch point example: [Offence](#) to furnish false or misleading information when complying with a request of an environmental management inspector.

15. National Health Act and Regulations

Application note: Norms and standards for premises.

Touch point example: Offence to knowingly give false or misleading information to a health officer or an inspector.

16. National Regulator for Compulsory Specifications Act and Regulations

Application note: Products must comply with any compulsory specifications.

Touch point example: Offence to tamper with or dispose of a commodity or product or consignment or batch in contravention of a section 19(1)(g) directive.

17. National Road Traffic Act and Regulations.

Application note: When driving on the public road there is a duty to comply with the rules of the road, comply with vehicle safety requirements, and to report a road accident. There is also a presumption that the owner of the vehicle drove or parked a vehicle, and a possibility of vicarious liability of an employee.

Touch point example: Possessing a fake driver's licence.

18. Occupational Health and Safety Act and Regulations.

Application note: Every employer has a duty to, as far as reasonably, ensure safe working premises for its employees and other persons visiting the work premises.

(Mine Health and Safety Act and Occupational Diseases in Mines and Works Act apply to mining sector.)

Touch point example: Offence, in any record, application, statement or other document referred to in this Act to wilfully furnish information or make a statement which is false in any material respect.

19. Preferential Procurement Policy Framework Act and Regulations.

Application note: When tendering services or products to any national, provincial, municipal or other government entity.

Touch point example: Remedies when detecting that a tenderer submitted false information.

20. Prescription Act.

Application note: To be considered when certain financial debts, not covered by other laws, is owed or is due.

Touch point example: If the debtor wilfully prevents the creditor from coming to know of the existence of the debt, then prescription shall not commence to run until the creditor becomes aware of the existence of the debt.

21. Prevention and Combating of Corrupt Activities Act and Regulations.

Application note: To be considered in any business interaction or sponsorship, keeping in mind that additional offences apply for failure to report, for corrupt directors/ employees/ agents, and for aiding in a corruption offence after the fact.

Touch point example: Corruption can be a form of fraud, and fraud can be a competent verdict for certain corruption charges.

22. Promotion of Access to Information Act and Regulations.

Application note: To be considered when applying for information, being requested to provide information in terms of the Act or otherwise or being requested to provide information belonging to a third party's. Where a regulator requests information under another law the right of refusal provisions in this Act may serve as examples of where such regulator may be overstepping their legal boundary.

Touch point example: Offence for a person, with intent to deny a right of access in terms of this Act, to destroy, damage, alter, conceal or falsify a record or to make a false record.

23. Promotion of Administrative Justice Act and Regulations.

Application note: To be considered whenever dealing with a person given a public function by law who then intends to exercise an administrative discretion.

Touch point example: Administrative action may be [judicially reviewed](#) if, amongst others, the action was taken for an ulterior purpose or motive, because of the unauthorised or unwarranted dictates of another person, or in bad faith.

24. Promotion of Equality and Prevention of Unfair Discrimination Act and Regulations.

Application note: When an employer or its employees interact with non-employees, such as customers, suppliers, regulators etc.

Touch point example: Claims made, knowing that they are false, that a [person communicated words](#) based on one or more of the [prohibited grounds](#), against any person, that could reasonably be construed to demonstrate a clear intention to be hurtful, be harmful or to incite harm, and to promote or propagate hatred.

25. Protected Disclosures Act and Regulations.

Application note: Whenever considering protected disclosures by an employee, past employee, independent contractor, consultants, or agent. This law must be considered together with the protected disclosure provisions in laws such as the [Companies Act](#) and the [Pension Funds Act](#).

Touch point example: [Disclosure of false information](#).

26. Regulation of Interception of Communications and Provision of Communication-Related Information Act and Regulations.

Application note: To be considered when monitoring employee emails, recording communications or providing cellphones to employees. Further duties apply to communications providers.

Touch point example: Any person who furnishes particulars or information in any affidavit or report referred to in this Act, knowing such particulars or information to be false, incorrect or misleading or not believing it to be correct, is guilty of an [offence](#).

27. Tax Administration Act and Regulations.

Application note: Starting point for compliance with all applicable tax laws, when ensuring internal tax reporting, records and payments are in order, when [asserting legal professional privilege](#) in tax related matters, when required [to collect tax on behalf of SARS](#), when the [list of reportable arrangements](#) is triggered etc.

Touch point example: [Criminal offences relating to filing return without authority](#).

Notes on the overview

(i) This is not a definitive or up-to-the minute list. It is simply a note to remind the reader to keep other laws in mind as well, whether under the mantle of 'applicable laws', 'legal register', 'regulatory universe', or other chosen nomenclature.

(ii) This list looks at laws that apply to a large majority, if not all, SA businesses. Sector-specific laws, such as the [Financial Sector Regulation Act](#), [Public Finance Management Act](#), [Mine Health and Safety Act](#), [Civil Aviation Act](#), or [Alienation of Land Act](#) are not mentioned here (you may find those laws by searching the relevant employee, financial, general, information, property or safety library after clicking on the home button).

(iii) Laws that are related to an Act can be found by clicking on the Act in the list and then considering the list of Related Laws found on the right-side of that law, or laws that appear at the end of an Act. Again, the related laws do not constitute a definitive or up-to-the-minute list.

(iv) This list does not consider Bills or Acts that have not commenced yet.

(v) This list focuses on laws that apply to most businesses, and may be triggered by daily, weekly, monthly or annual business activities - general laws such as the [Conventional Penalties Act](#) is not included for that reason.

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Kind regards,

SAIPA Technical and Standards Department



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