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The Contemporary Gazette
relevant new legislation for your business



**INSTITUTE OF DIRECTORS
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1. Notable One Liners

General

Auditing Profession Act

New [fees](#) apply as from 1 April 2020 (application for registration, renewal, training contract, audit development programme, inspection cancellation, administration and accreditation).

Banks Act

Amendment dates for [section 1A](#) (relationship between Act and Financial Sector Regulation Act) and [section 90](#) (regulations) changed to 1 April 2021.

Basic Conditions of Employment Act

Correction made to [sectoral determination 6 private security sector \(compensation for work on a Sunday\)](#).

Collective Investment Schemes Control Act

Amendment dates for [section 1A\(8\)](#) and [114\(3\)\(d\)](#) and (6) changed to 1 April 2021.

Compensation for Occupational Injuries and Diseases Act

(i) [Maximum amount on which an assessment](#) of an employer is calculated on, is R484 200.00 per annum, with effect from 1 March 2020.

(ii) Notice gazetted to all employers registered with the Compensation Fund to [submit the return of earnings](#) on the 1st April 2020 to 31st May 2020, to avoid penalties and interest charges.

(iii) The proposed amendments to schedule 4 (manner of calculating compensation) are available from the Department of Employment and Labour. Comment deadline 60 days from 3 April 2020.

Competition Act

(i) Completion date for [land-based public passenger transport market inquiry](#) further extended to 30 June 2020.

Note: The inquiry focuses on services offered by rail based public passenger transport services (Gautrain and Metrorail) and road based public passenger transport services (commuter buses, long distance buses, app based taxis eg Uber and Taxify, minibus taxis, metered taxis, and localised taxis).

(ii) The [New National Hospital Network exemption](#) has been amended.

Co-operative Banks Act

Amendment date to [section 1A\(8\)](#) changed to 1 April 2021.

Credit Rating Services Act

Amendment dates for [section 1A\(8\)](#) (relationship between Act and FSRA - fee references), [5](#) (registration for application amendment), and [28](#) (fees and penalties repeal) changed to 1 April 2021.

Electricity Regulation Act

[Schedule 2](#) (exemption from obligation to apply for and hold a licence) amended on 26 March 2020.

Electronic Communications Act

- (i) The [technical standards for electronic communications equipment](#) have been amended.
- (ii) The [administrative fees associated with type approval](#), the [radio frequency spectrum fees](#), and the [administrative fees associated with applications and registrations relating to service licences](#) were increased on 1 April 2020.
- (iii) Licensees are granted, for the 2020/2021 licence period, an extension to 30 June 2020, to submit [radio frequency spectrum licence renewal applications](#), and to pay renewal fees for such applications.

Financial Advisory and Intermediary Services Act

Amendment dates for [section 1](#) (definition of Ombud Council), [3](#) (general provisions concerning Authority), [section 20](#) (office of ombud for financial service providers), [21](#) (appointment of ombud), [22](#) (funding of office), [23](#) (accountability), and [41\(1\)\(a\)](#) changed to 1 April 2021.

Financial Sector Regulation Act

Amendment dates for [chapter 14](#) (ombuds) changed to 1 June 2020.

Financial Services Board Act

Dates for [repeal](#) of section 1 (financial institution and trust property), [15A](#) and [16](#) changed to 1 April 2021.

Note: Also consider the [transitional provisions](#).

Financial Services Ombud Schemes Act

The Financial Sector Regulation Act [will now repeal this Act](#) on 31 December 2020.

Friendly Societies Act

Amendment dates for [section 1A\(4\)](#) (relationship between Act and FSRA - fee references), and [47\(1\)\(ba\)](#) (regulations - prescribed fees) changed to 1 April 2021.

Income Tax Act

Correction notice: In the previous newsletter it was stated that [new daily amounts in respect of meals and incidental costs](#) apply as from 1 March 2019, when it should have stated 1 March 2020 (as per the underlying notice when one follows the link).

Labour Relations Act

[Accreditation](#) for Bargaining Council for the Civil Engineering Industry, Transnet Bargaining Council, and Education Labour Relations Council gazetted.

Legal Practice Act

- (i) Draft guidelines and draft application for accreditation to present practical vocational training structured programmes available from the Council. Comment deadline 3 May 2020.
- (ii) [Draft process and criteria for conferment of senior counsel and senior attorney status](#) gazetted. Comment deadline 30 days from 27 March 2020.

Long-term Insurance Act

- (i) Independent intermediaries exemption (with conditions) from 16 March 2020 for [regulation 8.2\(2\)](#) (the regulation 8.2 separate bank account may only contain monies collected from policyholders and may not contain any monies or funds of the independent intermediary) - available from the FSCA.

Note: The introductory paragraph uses the term proposes, but the draft exemption has been out for a while, and the remainder of the text indicates that this is a final regulation.

(ii) Amendment to [section 1A](#) (relationship between Act and Financial Sector Regulation Act) changed to 1 April 2021.

Medicines and Related Substances Act

[Dispensing fee](#) to be charged by persons licensed in terms of [section 22C\(1\)\(a\)](#) amended.

Mineral and Petroleum Resources Development Act

[General regulations](#) amended on 27 March 2020.

Municipal Fiscal Powers and Functions Act

The Draft Amendment Bill 2020 proposes, [amongst others](#), introducing development charges, and sanctions for financial misconduct by a municipality official. Comment deadline extended to 30 April 2020.

Mutual Banks Act

Amendment dates for [section 1A](#) (relationship between Act and Financial Sector Regulation Act), and [91](#) (regulations) changed to 1 April 2021.

National Environmental Management Act

[General requirements](#) gazetted for site sensitivity verification and certain protocols relating to impacts for environmental themes (agriculture, avifauna, biodiversity, noise, defence, civil aviation).

National Environmental Management Air Quality Act

Amendment, relating to minimum emission standards for solid fuel combustion installations, made to the [list of activities which result in atmospheric emissions that may have a significant detrimental effect](#).

Pension Funds Act

- (i) Amendment dates for [section 1A\(6\)](#) and [chapter 5A](#) (consideration and adjudication of complaints) changed to 1 April 2021.
- (ii) FSCA communication 10 of 2020 (interpretation ruling on [section 37C](#) disposition of pension benefits on death of a member) available from the FSCA.

Postal Services Act

The [unreserved postal services regulations](#) (for a registered operator or registrant who provides unreserved postal services listed in [Schedule 2](#) of the Act) will commence 90 days from 27 March 2020.

Prescribed Rate of Interest Act

The [prescribed rate of interest](#) is 9,75% per annum as from 1 March 2020 (it was previously 10,00%).

Note: You may also wish to consider the [past overview](#) on the importance of this interest rate to all entities.

Public Audit Act

- (i) [Audit fees regulations](#) gazetted 1 April 2020.
- (ii) [Public Audit Excess Fee Act](#) commenced 1 April 2020 - it provides that the excess of any audit fee, as envisaged in the amended [section 23\(6\)](#), will be a direct charge against the National Revenue Fund.

Draft Public Procurement Bill

Comment deadline for the [Draft Bill](#) extended to 30 June 2020.

Note: You may wish to revisit the [past overview](#).

Public Service Act

[Schedule 2](#) designations of Northern Cape provincial departments substituted 1 April 2020.

Short-term Insurance Act

- (i) Independent intermediaries exemption (with conditions) from 16 March 2020 for the [regulation 4.2\(3\)](#) requirement (regulation 4.2 separate bank account may only contain monies collected from policyholders and may not contain any monies or funds of the independent intermediary) - available from the FSCA.

Note: The introductory paragraph uses the term proposes, but the draft exemption has been out for a while, and the remainder of the text indicates that this is actually a final regulation.

- (ii) Amendment date for [section 1A](#) (relationship between Act and Financial Sector Regulation Act) changed to 1 April 2021.

Skills Development Act

[Draft regulations to conduct investigations](#) gazetted. Comment deadline 30 April 2020.

Social Service Profession Act

The draft Social Service Practitioners Bill, which is available from the Department of Social Development, proposes repealing [this Act](#). Comment deadline 60 calendar days from 27 March 2020.

Standards Act

New, proposed, amended, and withdrawn [standards](#) gazetted for 27 March 2020 and 3 April 2020.

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](#).

Taxation Laws Amendment Act 17 of 2009

[Equitable allocation to each metropolitan municipality](#) determined from the direct charge amount (equal to a fixed percentage of revenue raised from the collection of the general fuel levy).

Unemployment Insurance Act

The Labour Laws Amendment Act on 1 April 2020, [amongst others](#), amended section 12 (right to benefits), section 27 (right to adoption benefits), and section 28 (application for adoption benefits), and inserted sections 29A, 29B and 29C (commissioning parental benefits).



2. Disaster Management Act: COVID-19

Safety

IMPORTANCE OF THE DECLARATION

The [declaration](#) of a COVID-19 national state of disaster [lapses](#) 3 months after 15 March 2020, unless the Minister Gazettes an extension for 1 month at a time, or Gazettes an earlier termination date.

The declaration gives validity to the Disaster Management Act [COVID-19 measures](#) and [directions](#), and other gazetted COVID-19 measures (such as the [Competition Act COVID-19 regulations](#)).

The regulations or directions under the declaration [may only be exercised](#) to the extent necessary to assist, protect and provide relief to the public; protect property; prevent disruption; combat disruption; or deal with the destructive and other effects of the disaster.

Note: The [Constitution](#) balances [Constitutional Rights](#) with [Constitutional Limitation of Rights](#). Certain extraordinary measures to combat COVID-19, such as [contact tracing](#), will hopefully remain within the justifiable limitation - the test will be how the measures were managed during and after the [lockdown](#).

Further Note: A [Disaster Management Act declared national disaster](#) is not the same as a [Constitutional declared state of emergency](#), although both involve the [Constitutional limitation of rights](#) to different extents.

LOCKDOWN PARAMETERS

The [COVID-19 measures](#) are the anchor measures to combat the COVID-19 pandemic:

- (i) [Chapter 2](#) (lockdown) [apply above other COVID-19 measures](#), if there is any inconsistency between chapter 2 and [Chapter 1](#) (or any direction made under the [authority to make directions](#)); and

Note: [Chapter 3](#) contact tracing is not currently referenced in the [regulation 1A](#) (hierarchy of measures).

(ii) [Lockdown](#) will [apply until](#) 16 April 2020 at 24H00, or on a date to be determined by the Minister.

OFFENCES

The COVID-19 measures provide for [general offences](#), [lockdown offences](#), and [contact tracing offences](#), while the [COVID-19 directions](#) and other COVID-19 regulatory measures provide for further sanctions.

Note: These offences apply in addition to offences, where relevant, in terms of other laws, such as common law fraud, the [Prevention and Combatting of Corrupt Activities Act](#), the [Trespass Act](#), etc.

Further note: The Act grants [indemnity](#) for anything done in good faith for the objects of the [Disaster Management Act](#) - this should not include gross negligence as that clearly runs counter to good faith effort.

Final note: [Regulation 11F](#) states that the regulations (it is not certain if this refers to only chapter 2 or the entire regulations) do not limit any powers or indemnities of security services provided for in any law.

COVID-19 REGULATORY NOTES

The following are non-definitive compilation notes (as at 5 April 2020):

1. [Basic Conditions of Employment Act](#)

(i) Increased attention to employees sick leave and annual leave days, and contract terms - the Act may allow employers to insist annual leave be taken during lockdown, but they may also need to consider the cost-benefit of this approach and situations where leave is partially used up, or the lockdown is extended.

Note: Where possible, legal advice and great circumspection is recommended as the labour environment can be fragmented (see eg [sector-specific determinations](#)), no employer situation is the same as another, and decisions now may affect perception and talent retention by past and present and future employees.

Further note: A [public holiday](#) cannot count as an annual leave day.

(ii) Increased attention to employees working hours, and specifically to more flexible working hours given measures such as the [closure](#) of [schools](#) and [partial care facilities](#) during lockdown, which period may be extended for the duration of the national state of disaster by the Minister.

Note: The COVID-19 measures also provide for [suspension of visits](#) by the public to correctional centres; remand detention facilities; holding cells; military detention facilities; and department of social development facilities (including child and youth care centres, shelters, one stop centres, and treatment centres).

(iii) [Immigration Act: COVID-19 directions \(entry into SA and exit from SA\)](#) - for example, except for foreigners who were already in SA on or before 15 March, all temporary residence visas for foreigners residing in high risk countries were, subject to [section 10\(9\)](#) and (10), withdrawn from 26 March 2020.

Note: A foreigner who departed from a high risk country or, transited through a high risk country or having been issued with a relevant visa, and who entered SA on or after 15 February 2020 is required to immediately notify a medical practitioner as per the procedure for a suspected COVID-19 case.

(iv) [Unemployment Insurance Act: The COVID-19 directions \(temporary employee/employer relief scheme\)](#) provides a potential:

- [Illness benefit](#) where an employee is in [quarantine](#) for 14 days due to Covid-19 pandemic; and

- [Salary relief](#) if an employer, directly due to the pandemic, closes operations for 3 months or less and suffers financial distress.

Note: Although the text refers to companies it likely meant employers.

Further note: To qualify for the relief a company must be registered with the UIF, comply with the [application procedure](#), and have its closure directly linked to the COVID-19 pandemic. An employee paid by the employer during this period is not entitled to this benefit.

Final note: The UIF website should be visited when considering other UIF benefits, such as where there is a temporary business closure and lay off of employees that does not fall within the TERS parameters, or where there is reduced working hours and payment.

- (v) [Labour Relations Act: Section 189](#) regulates dismissals based on operational requirements.

2. [Competition Act](#)

- (i) [Emergency procurement](#) for institutions is subject to:

- The [Public Finance Management Act](#), and applicable emergency provisions in its regulations or instructions; and

Note: Also see the Public Finance Management Act [exemption](#), National Treasury Instruction 8 of 2019/2020 (Emergency procurement in response to national state of disaster), and the DPSA Circular 15 of 2020.

- The [Municipal Finance Management Act](#), and applicable emergency provisions in its regulations.

Note: Also see the Local Government Municipal Finance Management Act [exemption](#).

Further note: The [COVID-19 directions \(municipalities, provinces and traditional leadership\)](#) require that those entities must take reasonable measures relating to, amongst others, water and sanitation

services; communication, awareness, and hygiene education; and waste management, cleansing and sanitization.

(ii) [Essential goods and services](#) (during [lockdown](#)) declaration:

- Essential goods is defined as the goods referred to in paragraph A of [Annexure B](#);

Note: Most recently updated to specifically reference medicine, wood and the withdrawal of cash;

- Essential services is defined as the services as [defined](#) in section 213 of the Labour Relations Act, and currently [designated](#), and as listed in paragraph B of [Annexure B](#);

Note: Most recently updated to specifically reference pest control, pension payments, wholesale produce markets, informal food traders (with the necessary municipal authorisation to trade as such), cremation, transporting mortal remains, air charters, and cargo;

- Essential goods or services may be provided during lockdown while other [goods or services are restricted](#) by necessity;

Note: There may be ambivalence in general terms used - for example a food product could theoretically be interpreted widely - caution is advised when interpreting the requirements as reflected at any stage, as well as revisiting existing permits to ensure requirements are still met, and any new areas are considered.

Further note: The related laws links on the right side of [Annexure B](#) shows other services also declared essential, such COVID-19 directions (tourism) [accommodation](#), COVID-19 directions (courts) certain [legal practitioners](#), and COVID-19 directions (public transport services) [essential road services](#).

Final note: The text of [lockdown restriction on movement](#) and [prohibition on public transport](#) and [places and premises closed to the public](#) also contain their own exceptions to the restrictions, for example, certain security and maintenance services, and hotels where persons permitted to move between areas.

(iii) [Competition authority measures to protect consumers and customers](#) and [penalties for non-compliance](#):

- [Apply](#) to the supply, during the period of the national disaster, of goods and services contemplated and listed in [Annexures A](#) (basic food and consumer items; emergency products and services; medical and hygiene supplies; and emergency clean-up products and services) and [Annexure B](#);

Note: Annexure B currently lists toilet paper; hand sanitiser; facial masks; disinfectants cleaners; surgical gloves; surgical masks; disinfectant wipes; antiseptic liquids; all-purpose cleaners; baby formula; disposable nappies; bleach; cooking oils; wheat flour; rice; maize meal; pasta; sugar; long-life milk; canned and frozen vegetables; canned, frozen and fresh meat, chicken or fish; and bottled water; and private medical services related to testing, prevention and treatment of COVID-19 and its associated diseases.

- During any period of the national disaster, a price will on the face of it be [excessive or unfair](#) if there is a material price increase of a good or service contemplated in [Annexure A](#) which does not correspond to or is not equivalent to the increase in the cost of providing that good or service, or an increase in the net margin or mark-up on that good or service above the average margin or mark-up for that good or service in the 3 month prior to 1 March 2020;

Note: In addition such action will be deemed [unconscionable, unfair, unreasonable and unjust](#) and a supplier will be prohibited from effecting such a price increase.

Further note: [Provision is made](#) for the possibility of directions should it become necessary to set maximum prices on private medical goods and services relating to the testing, prevention and treatment of the COVID-19 and its associated diseases during the national disaster.

- A [supplier must](#) develop and implement reasonable measures to ensure the equitable distribution to consumers or customers, including small businesses, of goods contemplated in [Annexure A](#), and maintain adequate stock of goods contemplated in [Annexure A](#);

Note: These measures may include limiting the number of items of the goods referred to in [Annexure B](#) which a consumer or customer may purchase in a defined period of time.

- A [retailer must](#) prominently display a notice in each of its stores that states it has developed and will implement the supplier measures above and it will adequately and diligently carry out these measures; and
- A [wholesaler must](#) take all reasonable steps to ensure that purchases by customers and consumers are not intended to circumvent the object and implementation of the above supplier measures.

Note: [Provision is made](#) for the possibility of setting maximum quantities limiting the number of items of the goods referred to in [Annexure B](#) which a consumer or customer may purchase in a defined period of time, should it become necessary.

Further Note: Also see [Tribunal rules for COVID-19 excessive pricing complaint referrals](#).

(iv) COVID-19 block exemption for:

- The [banking sector](#) (relating to certain payments system, and debtor and credit management, matters);
- The [healthcare sector](#) (relating to certain hospitals and healthcare systems, medical suppliers, medical specialists and radiologists, pathologists and laboratories, pharmacies, and healthcare funders, matters);
- The [hotel sector](#) (relating to accommodation of persons placed under quarantine and related cost reduction measures); and
- The [retail property sector](#) (relating to consideration of certain payment holidays and/or rental discounts for tenants, limitations on the eviction of tenants, and the suspension or adjustment to lease agreement clauses that restrict the designated retail tenants from undertaking reasonable measures required to protect viability during the national disaster).

(v) [International Trade Administration Act](#): The [COVID-19 Export control regulation](#) places export control on, for example, alcohol-based hand sanitizers, face-masks, gas masks, and certain vaccines.

3. Consumer Protection Act

(i) [Essential goods and services](#) (during [lockdown](#)) must still comply with the requirements of the Consumer Protection Act, including the [right to fair value, safe, and good quality goods](#).

Note: Other requirements may also apply, such as requirements set by the [National Regulator for Compulsory Specifications Act](#) ([specifications](#) for chemical disinfectants, food, and respiratory devices); the [Foodstuffs, Cosmetics and Disinfectants Act](#); and the [Medicines and Related Substances Act](#).

(ii) The [Tourism Act: COVID-19 directions \(tourism\)](#) regulates accommodation used for persons rendering essential services, quarantine, isolation and the lockdown.

Note: Also see the [closed premises exception](#) (hotels, lodges and guest houses, for [regulation 11B\(8\)\(h\)](#), to the extent required for persons from another metropolitan area, district, or province).

(iii) [Limitation on the sale, dispensing or transportation of liquor](#) (during national state of disaster, and when lockdown has ended).

(iv) Increased attention to contract terms, and to short-term assistance measures such as buying service vouchers for later use. Potential short-term increase in debt collection, actions against non-paying tenants, and other services that were put on hold during lockdown.

Note: Related laws here include, but are not limited to, the [Debt Collectors Act](#) and [Rental Housing Act](#).

(v) The [COVID-19 directions \(courts\)](#) state, amongst others, that service of process and execution of writs by sheriffs must be limited during lockdown to cases which are urgent and essential, including service of process relating to claims which are prescribing.

4. Financial services

Note: FSCA communications are available from the Financial Sector Conduct Authority (FSCA).

(i) [Financial Advisory and Intermediary Services Act](#):

- FSCA general notice 1 of 2020 extends period of compliance with certain [section 19\(2\)\(b\)\(iii\)](#) annual financial statements requirements;
- FAIS Notice 17 of 2020 - 2020 CPD cycle extension to 31 August 2020, 2021 CPD cycle exemption, and date by which a supervised representative must comply with conditions 2(1), (2) or (3) of the Exemption of Services under Supervision, 2 of 2018 (FSCA FAIS notice 86 of 2018) extended to 15 December 2020;
- FAIS notice 16 of 2020 (qualifications recognised in terms of [section 24](#) of the Determination of Fit and Proper Requirements for Financial Services Providers, and deemed to be recognised in terms of [section 52\(2\)](#) of the determination, for financial services providers, key individuals and representatives); and
- FSCA Communication 9 of 2020 (extension of submission of certain financial statements; and extension of all regulatory examinations and class of business training and qualification with a deadline for 2020 to 15 December 2020);

Note: Includes that CPD requirements cycle extended to 31 August 2020 and consideration of alternative methods to obtain CPD be considered. The FSCA specifically states it will do its best to accommodate anyone experiencing problems in complying with specific regulatory requirements because of COVID-19.

(ii) [Financial Intelligence Centre Act](#): All entities still required to comply with [section 29](#) suspicious and unusual transaction reporting and record-keeping duties, and [financial sanctions requirements](#).

Note: Further reporting and record-keeping requirements still apply to [accountable institutions](#), [reporting institutions](#) and [supervisory bodies](#).

(iii) **Financial Sector Regulation Act**: FSCA communication 12 of 2020 states regulatory expectations relating to, amongst others, business continuity measures, insurance products geared around the impact of COVID-19, insurance claim turnaround and exclusion clarification, assistance with renewals and avoiding lapses, banking operations using the future banking conduct standard as a good practice, advisors and intermediary service providers staying informed about developments, retirement funds, and investment providers.

Note: The communication also includes a general reminder regarding third parties, complaint management, and cybersecurity.

(iv) **Banks Act**: The COVID-19 block exemption for the **banking sector** means that, amongst others, and to a certain extent, banks can work towards similar measures to assist clients during the pandemic with measures such as debt holidays.

(v) **Collective Investment Schemes Control Act**:

- FSCA general notice 1 of 2020 extends the period of compliance with certain **section 90(2)(b)(iii)** annual financial statements; and
- FSCA Communication 9 of 2020 (extension of period for submission of financial statements; contact FSCA if any difficulty with capital adequacy, mark-to-market report, risk report or list of asset submissions).

Note: The Authority specifically states that it will do its best to accommodate anyone that is experiencing problems in complying with specific regulatory requirements because of the impact of COVID-19.

(vi) **Financial Markets Act**: FSCA communication 15 of 2020 (FM) extends the period of compliance with certain **section 11** and **90** requirements.

(vii) **Friendly Societies Act**:

- FSCA general notice 1 of 2020 extends compliance with certain **section 22, 24** and **25** requirements; and
- FSCA Communication 9 of 2020 (extends submission of annual returns)

Note: The Authority specifically states that it will do its best to accommodate anyone that is experiencing problems in complying with specific regulatory requirements because of the impact of COVID-19.

(viii) [Insurance Act](#), [Long-term Insurance Act](#), and [Short-term Insurance Act](#):

- FSCA general notice 1 of 2020 extends the period of compliance with certain STI [section 35](#) conduct of business return, and with certain LTI [section 36](#) conduct of business return, requirements;
- FSCA communication 14 of 2000 (INS) - includes a statement that funeral parlours carrying on business as authorised FSPs must not compromise clients safety, must meet the spirit of the [COVID-19 measures](#), and must notify policyholders accordingly of the [LTI Policyholder Protection Rules](#) grace periods;
- FSCA press release 30 March 2020 - reminder to limit essential services to those necessary to support the functioning of the financial system and maintaining a stable financial environment, and that any person who continues to engage in non-essential services will be subjected to appropriate regulatory action; and

Note: The press release mentioned declaring travelling nurses as essential services to collect blood samples for new business underwriting purposes.

- FSCA Communication 9 of 2020 - submission of conduct of business returns extended to 31 May 2020.

Note: The FSCA specifically states it will do its best to accommodate anyone that is experiencing problems in complying with specific regulatory requirements because of the impact of COVID-19.

(ix) [Pension Funds Act](#):

- FSCA general notice 1 of 2020 extends the period of compliance with certain [annual report](#), [section 15](#) annual financial statements and [section 16](#) valuation reports;

- FSCA Communication 11 of 2020 (guidance to assist employers who are unable to pay the full or any contributions on behalf of their employees to their retirement funds pursuant to [section 13A](#)); and
- FSCA Communication 9 of 2020 (extension of submission of annual returns and valuation reports)

Note: The FSCA specifically states that it will do its best to accommodate anyone that is experiencing problems in complying with specific regulatory requirements because of the impact of COVID-19.

(x) [National Credit Act](#): There may be increased attention to credit life insurance cover provisions.

5. Information laws

(i) [Companies Act](#): The dti manages the bizportal.gov.za, and the solidarity fund and in-kind donations portal can also be found on the dti homepage.

Note: The above is not limited to companies.

Further note: The dti has given a warning that false applications to be an essential service will be considered fraudulent applications. An entity that is not certain whether it provides essential services should take legal advice if possible. For example, food product may be open to interpretation for a layman.

Final note: At this stage a company ignoring the need to take reasonable COVID-19 measures may possibly be considered to be [trading recklessly](#).

(ii) [Electronic Communications and Transactions Act](#): Electronic transactions, signatures, [cybercrime](#), and [consumer protection](#) provisions will remain relevant during a time of increased usage in electronic transactions (potentially in pre-screenings), and online permits (such as [essential services permits](#)).

Note: Employees that work from home may need to be reminded of the employer's cybersafety protocols.

(iii) [Employment Equity Act](#): Employees that work from home may need to be reminded of communication protocols to ensure that communications made on behalf the employer, do not transgress the prohibition of unfair discrimination or prohibition of harassment provisions of this Act.

(iv) Magistrates Courts Act and Superior Courts Act: The [COVID-19 directions \(courts\)](#) give reasonable measures to continue the [right to access to courts](#), in the circumstances and:

- Civil cases not identified as urgent and essential services may not be placed on the court roll during lockdown, but heads of courts may authorise hearing of matters through teleconference, videoconference or any other electronic mode, which dispenses with the need to be physically present in a courtroom; and
- Regulate restricted access to the court, court precinct and all justice service points; postponements of criminal cases and related matters; social distancing measures; civil cases and legal aid generally limited to urgent and essential cases during lockdown;
- Regulate services of the Master during lockdown; family law services during lockdown; travel by officers of court during lockdown (essential services); all essential services to have certificate in their possession; safety measures during state of national disaster; and exclusion events determined by judicial officers.

Note: Magistrates Courts Act and Superior Courts Act [directives](#) (for restricted access to the court precinct and use of audio visual remand centres and other electronic communication means) were also gazetted.

(v) [National Small Enterprise Act](#): SMMES debt relief finance scheme details and requirements are available from the department of small business development (dsbd) website.

(vi) [Promotion of Access to Information Act](#): To be considered when applying for information, being requested to provide information or being requested to provide information belonging to a third party.

Note: 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.

(vii) [Promotion of Administrative Justice Act](#): To be considered whenever dealing with a person given a public function by law who then intends to exercise an administrative discretion.

Note: Legal advice is suggested if considering administrative matters during this time, as many of the COVID-19 measures are not administrative discretions.

(viii) [Promotion of Equality and Prevention of Unfair Discrimination Act](#): Employees that work from home may need to be reminded of communication protocols to ensure communications, made on behalf the employer, do not transgress the prohibition of unfair discrimination or prohibition of harassment provisions.

(ix) [Protected Disclosures Act](#): Relevant when considering protected disclosures by an employee, past employee, independent contractor, consultants, or agent.

Note: This law must be considered together with the protected disclosure provisions in laws such as the [Companies Act](#) and the [Pension Funds Act](#).

(x) [Independent Police Investigative Directorate Act](#): IPID may investigate complaints of:

- Deaths in police custody;
- Deaths as a result of police actions;
- Complaint relating to the discharge of an official firearm by any police officer;
- Certain s offences by a police officer or to a person in police custody;
- Complaint of torture or assault against a police officer in the execution of his or her duties (also see the [Prevention and Combating of Torture of Persons Act](#));

- Corruption matters within the police (also see the [Prevention and Combating of Corrupt Activities Act](#)); and
- Other matter referred to it as a result of a decision by the Executive Director, or if so requested by the Minister, an MEC or the Secretary as the case may be, in the prescribed manner.

Note: Section 20 of the Defence Act (powers and duties of members while being employed) gives some context to the work of the defence force members serving the country at this time.

(xi) [Protection of Personal Information Act](#): The guidance note on the processing of personal information in the management and containment of COVID-19 pandemic (available from the Information Regulator), amongst others, confirms (in the context of COVID-19) that:

- Employers can request specific information on the health status of an employee, and require an employee to undergo testing;

Note: Employers are advised to take legal advice on how they manage such requests (including distancing protocols if a COVID-19 infection is reasonably suspected), and the personal information gained.

- A person cannot refuse to give consent to be tested for COVID-19, and a person that tested positive has a duty to disclose this to government to enable it to take appropriate measures to combat the spread; and
- Electronic communications service providers can provide location-based data to the government to use for tracking subjects, and to use for mass surveillance of subjects to manage the spread of COVID-19.

(xii) [Contract tracing](#):

- The COVID-19 Tracing Database (Database) must include all information considered necessary for the contact tracing process to be effective;

- The information contained in the Database, and any information obtained through this regulation, is confidential;

Note: No person may disclose any information contained in the Database, or any information obtained through this regulation, unless authorized to do so and unless the disclosure is necessary for the purpose of addressing, preventing or combatting the spread of COVID-19.

- A person taking the sample for purposes of testing for COVID-19 must obtain as much of the prescribed information as is available at the time of taking the sample, and promptly submit this information, along with any information it has regarding likely contacts of the person tested, to the Director-General: Health;

Note: Further transmission duties also apply to any laboratory that tested a sample for COVID-19, and to the National Institute for Communicable Diseases.

- Every accommodation referred to in [Annexure D](#) (c)(vii) to (c)(ix) must, promptly after 2 April 2020, transmit to the Director-General: Health, for inclusion in the Database, the prescribed information regarding every person staying at that establishment during the period of [lockdown](#);
- The Director-General: Health may, in writing and without prior notice to the person concerned, direct an [Electronic Communications Act](#) licensed electronic communications service provider to provide, for inclusion in the Database, such prescribed info as available, and the provider must promptly comply;

Note: Such information may only be obtained in relation to the location or movements of persons during the period 5 March 2020 to the date on which the [national state of disaster](#) lapsed or has been terminated.

Further note: Such information may only be obtained, used or disclosed by authorised persons and only when necessary for addressing, preventing or combatting the spread of COVID-19 through the contact tracing process. Where relevant to the contact tracing process, it must be included in the Database.

Final note: Apart from what is included in the Database, such information may only be retained by the Director-General: Health for 6 weeks after being obtained and shall thereafter be destroyed.

- The Director-General: Health, or any other person, is not entitled by the regulation to intercept the contents of any electronic communication;
- The Director-General: Health must, within 6 weeks after the [national state of disaster](#) has ended, notify every person whose information was obtained that information regarding their location or movements was obtained;
- The Director-General: Health must file a weekly report with the COVID-19 Designated Judge setting out the names and details of all persons whose location or movements were obtained, which judge must make such recommendations to the responsible Cabinet members as he or she deems fit regarding the amendment or enforcement of this regulation to safeguard the right to privacy while ensuring the ability of the Department of Health to engage in urgent and effective contact tracing to address, prevent and combat the spread of COVID-19;
- Within 6 weeks after the [national state of disaster](#) has lapsed or has been terminated: the information on the Database must be de-identified; the de-identified information on the Database may be retained and used only for research, study and teaching purposes; all information on the Database which has not been de-identified shall be destroyed; and the Director-General: Health shall file a report with the COVID-19 Designated Judge recording the steps taken in this regard, and the steps taken to notify affected persons;

Note: Upon receipt of the report, the COVID-19 Designated Judge may give directions as to any further steps to be taken to protect the right to privacy of those persons whose data has been collected, which directions must be complied with.

Further note: A related law here includes the [Regulation of Interception of Communications and Provision of Communication-Related Information Act](#).

(xiii) [COVID-19 directions \(electronic communications, postal and broadcasting\)](#): Amongst others:

- Includes the statement that all internet sites operating within .zaDNA top level domain name must have a landing page with a visible link to www.sacoronavirus.co.za;
- Requires that service providers of electronic communications networks and services (telecommunications infrastructure and services) must ensure continued service provision;
- States that no access fee may be charged by property owners to electronic communications network service licensees for deploying networks or facilities that are not intrusive (such as buried or overhead cabling), that does not constitute a cost to the owner, or deprive the owner of its own use of the land;

Note: Further states that reasonable access fees may be charged where more intrusive networks or facilities, such as masts, are erected on property - any access fee must be reasonable in proportion to the disadvantage suffered and must not enrich the property owner or exploit the network service licensee.

- To the extent possible, ICASA must relax spectrum regulations to enable temporary licensing of all available spectrum bands, including the unassigned high demand spectrum, for the duration of the COVID-19 national disaster;
- The electronic communication service and network service licensees, internet and digital sector in general, must provide location-based services in collaboration with the relevant authorities identified to support designated departments to assist and combat the spread of COVID-19;

Note: This provision should be subject to the [contact tracing parameters](#).

- The South African Post Office must make available its national address system and any applicable database to assist the relevant authorities identified to track and trace individuals that have been infected and such other persons that may have been indirect contact with such infected persons.

Note: A database may be correlated with other sources from government and private sector;

Further note: This provision should be subject to [contact tracing parameters](#).

- Electronic communications service licensees must provide zero-rated access to local educational content websites;
- All audio-visual services particularly broadcasting service licensees must support the health sector with programming and public announcements related to the COVID-19 disaster; and
- All licensed entities must not effect any price increases and not perform mobile number portability for duration of the COVID-19 national disaster.

6. National Health Act

(i) Norms and standards for premises, including pest control (classified as an [essential service](#)), will be important whether or not any employees are at premises.

Note: The [National Building Regulations and Building Standards Act](#) also contains maintenance requirements.

(ii) The COVID-19 measures provides for [specific measures to undergo COVID-19 testing](#) and for [places of quarantine and isolation](#).

Note: For the period of the declaration of a [lockdown](#), a person refusing to be evacuated from any place subject to lockdown, [may be evacuated by an enforcement officer to a temporary shelter](#), if such action is necessary for the preservation of life.

Further note: The [communicable diseases to be notified](#):

- *Include respiratory diseases caused by a novel respiratory pathogens (with the [footnote](#) that examples of novel respiratory pathogens include novel influenza A virus and MERS coronavirus); and*
- *Contain wide reporting duties (such as those for any member of the community, including community health workers, local leaders, traditional or religious leaders).*

Final note: If the [communicable diseases to be notified](#) are to be considered at this stage, it is suggested that there preferably first be a direction gazetted that specifically addresses:

- The approach to be taken where there is a pandemic and not simply isolated cases;*
- An environment where some may confuse the common cold with COVID-19;*
- Where important lines may otherwise be inundated and unable to function due to every rational or irrational concern being reported from all corners; and*
- Acknowledgment that health services remain best-positioned to determine whether actual concerns exist, and will generally have the necessary protocols in place already.*

(iii) [National Environmental Management Act](#): The [COVID-19 directions \(environmental\)](#) aim to ensure fair processes, especially relating to licensing, public participation, appeals, reporting and waste management services during lockdown, which are not possible due to the restrictions placed on movement of people.

7. National transport laws

(i) [National Road Traffic Act](#): The [COVID-19 measures \(extension of validity period of licences and permits\)](#) provides that, during lockdown, and unless determined otherwise by the Minister, the validity period for:

- A learner licence, driving licence, motor vehicle licence disk, temporary permit, professional driving permit and roadworthy certificates is deemed valid, and is extended for a further grace period of 30 days from the date of expiry of a lock-down period; and
- The renewal of a motor trade number licence during the lock-down is deemed to be valid, and is extended for a further grace period of 6 months from the date of expiry of a lock-down period.

(ii) The [COVID-19 directions \(air services\)](#) regulate air cargo; international, domestic passenger flights, evacuation, repatriation and technical flights; access and hygiene, disinfection control at international airports designated as ports of entry; and responsibilities of the Civil Aviation Authority, Airports Company, and Air Traffic and Navigation Services.

(iii) The [COVID-19 directions \(cross-border road transport\)](#) prohibit cross-border road passenger transport for the duration of lockdown, despite any permit issued in terms of the [Cross-Border Road Transport Act](#).

Note: Cross-border freight movement will continue to and from our neighbouring countries.

(iv) The [COVID-19 directions \(entry into SA and exit from SA\)](#) regulates withdrawal and refusal of visas; suspension of visa exemptions; refusal of admission of foreigners; admission of citizens and permanent residents; transit of foreigners through and from SA; Visa concessions for foreigners inside SA; measures for airline crew members, emergency medical rescue, and diplomats; travel restrictions for citizens and permanent residents; closure of some ports of entry; and specific measures during the lockdown.

(v) The [COVID-19 directions \(public transport services\)](#) regulates improved access and hygiene, disinfection control on all public transport facilities; embarkation of public transport passengers in the public transport vehicles; prohibition of service of certain public transport during lockdown; prohibition of standing in a public transport vehicle; and loading capacity of public transport during lockdown.

Note: The notice includes a [declaration](#) of tollgate operators; road emergency operators; employees responsible for safe operation of roads; and rail logistic operators as [essential services during lockdown](#).

(vi) The [COVID-19 directions \(railway\)](#) regulates continuous updates of operators COVID-19 management plans; health and awareness campaigns; procedures at hand-over points, loading points and terminal depots; hygiene, screening equipment and disinfection control; prohibition

of overcrowding and overloading of trains; reporting; Railway Safety Regulator responsibilities; and ceasing of passenger and commuter rail operations during lockdown.

(vii) The [COVID-19 directions \(sea ports\)](#) regulates prohibition on cruise ships calling at any of the sea ports; access and hygiene, sterilization control; and reporting, tracking, tracing and monitoring system at sea ports.

8. Occupational Health and Safety Act

(i) Every employer has a duty to, as far as reasonably, ensure safe working premises [for its employees](#) and [for other persons](#) visiting the work premises, which would include taking reasonable measures to manage contamination risks.

Note: In addition, employers may choose to take an interest in the well-being, including mental health, of their employees that goes beyond the legal minimum expectations, and beyond the immediate work premises - taking note of development in laws such as the [Domestic Violence Act](#), the [Prevention and Treatment for Substance Abuse Act](#), the [Criminal Laws \(S Offences and Related Matters\) Amendment Act](#) (including the availability of PEP treatment), the [Protection from Harassment Act](#), the [Intimidation Act](#), and more.

(ii) Every employee has a [duty at work to take reasonable care](#) for the health and safety of himself or herself, and of other persons who may be affected by his or her acts or inactions, which could reasonably be interpreted to inform the employer if he or she believes they are infected, and to get medical help.

Note: The Department of Employment and Labour have prepared a COVID-19 workplace preparedness guideline on their website.

Further note: Employees may need to be reminded of the safety protocols of the employer, for example that an employee that suspects he or she is infected must leave the premises and get medical help.

Final note: Employees may possibly be need to be reminded of the serious criminal charges that the police service may lay against an employee that tests positive for COVID-19, and then does not undergo the required quarantine.

(iii) The [COVID-19 directions \(courts\)](#) state, amongst others, that service of process and execution of writs by sheriffs must be limited during lockdown to cases which are urgent and essential, including:

- Service and execution of Court orders relating to COVID-19;
- Service of domestic violence protection orders;
- Service of protection from harassment orders;
- Service of urgent court process relating to court hearings scheduled during the period of lockdown; and
- Service of urgent court process in [family law matters](#) as determined in these Directions;

(iv) [Compensation for Occupational Injuries and Diseases Act: Notice on compensation for occupationally acquired Covid-19](#) (resulting from single or multiple exposures to confirmed cases of COVID-19 in the workplace or after an official trip to high-risk countries or areas in a previously COVID-19-free individual.

Note: The notice lists 9 types of documents to be submitted, including an Employer's Report on an Occupational Disease W.CL.1 (or employee affidavit if the employer cannot be traced or will not timeously supply the report) and a Notice of an Occupational Disease and Claim (W.CL.14).

Further Note: [Provision is made](#) for total temporary disablement, permanent disablement, COIDA medical aid, and death benefits.

Final note: [Assessment of permanent impairment](#) will be determined 3 months after diagnosis and when maximum medical improvement has been reached.

(v) COVID-19 measures: Based on current wording it seems that, after a lockdown, and in order to contain the spread of COVID-19:

- A [gathering](#) will be [prohibited](#); and

- The assembly of more than 50 persons at premises where [liquor](#) is sold and consumed will be [prohibited](#).

Note: The updated definition of gathering did not include a reference to 100 persons.

(vi) The [COVID-19 directions \(social services\)](#) include, amongst others, a direction that psychosocial support services must be provided to all those infected with or affected by COVID-19.

(vii) The Community Schemes Ombud Services published a COVID-19 directive on its website (27 March 2020) that includes the advisory notice that walking in common areas, jogging, walking dogs, and group playing golf is prohibited, as they are not included as exceptions in the [section 27 measures](#).

Note: The [Community Schemes Ombud Services Act](#) applies to home owners associations, property owners associations, sectional titles, share block companies, housing schemes for retired persons, housing co-operatives etc (ie where there is shared use and responsibility for parts of land and buildings).

(viii) [Medical Schemes Act](#): CMScript issue 1 of 2020 (on Council for Medical Schemes website) states that, amongst others:

- “Diagnosis and management of uncomplicated COVID-19 infection is not included in the Prescribed Minimum Benefits (PMBs).
- COVID-19 infection may, however, result in various complications as listed above. Most of the complications are included in the PMBs and should be treated as specified for the specific condition. One of the most common complications of COVID-19 infection - Pneumonia - is a PMB condition under the Diagnosis and Treatment Pair (DTP) code 903D. This DTP refers to “Bacterial, viral, fungal pneumonia”. The treatment component for this condition is specified as “Medical management, ventilation”.

- All medical schemes are required by law to pay for the diagnosis, treatment and care costs for this condition in full irrespective of plan type or option. Medical schemes are not allowed to fund PMB conditions from a member's Medical Savings Account, as this is not in line with the PMB Regulations.
- In cases of uncomplicated COVID-19 infection where there are no PMB-eligible conditions, the scheme may fund all health care costs as per scheme rules”.

9. Tax Administration Act

(i) [Draft Disaster Management Tax Relief Administration Bill](#): Proposed legislative amendments (with [memorandum](#)) to implement COVID-19 tax measures ([deferral of employees tax](#), [deferral of provisional tax](#), [deferral of interim payments by microbusiness](#), and [extension of time periods prescribed by a tax Act](#)), which measures will take effect retrospectively on 1 April 2020. Comment deadline 15 April 2020.

(ii) [Employment Tax Incentive Act](#): The Draft Disaster Management Tax Relief Bill 2020 [proposes expanding](#) the Employment Tax Incentive age eligibility criteria and amount claimable. Comment deadline 15 April 2020.

(iii) [Income Tax Act](#): The Draft Disaster Management Tax Relief Bill 2020 proposes measures to give effect to COVID-19 tax relief measures - see the [explanatory memorandum on the draft bill](#) (regarding [paragraph 2](#) and [17](#) of the Fourth Schedule, and [sections 18A](#), [30](#) and [30C](#)). Comment deadline 15 April 2020.

Note: Consider taking accountant and tax practitioner advice regarding whether an increased focus on tax deductions for work from home is feasible or even sensible, as no taxpayer or business is the same as another and the question remains a very entity-specific question that deserves expert advice.

(iv) [Value-added Tax Act](#): The SARS website states that “[essential goods](#)” is subject to a VAT exemption on importation during the COVID-19 pandemic, under Item 412.11/00.00/01.00 of



Schedule 1, and a full rebate of customs duty under rebate item 412.11 of Schedule 4 to the Customs and Excise Act is available where ITAC has approved the rebate for the goods concerned.

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