

INFORMATION AND KNOWLEDGE BASE

ACTS, LAWS, AND REGULATIONS

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“A room without books is like a body without a soul” – Marcus Tullius Cicero

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ACTS, LAWS, AND REGULATIONS

3.1 Introduction

Here follows a short summary of each act, policy directive, applicable regulations, and their impact on our industry. Please note that these summaries are created to give the reader a fair idea of the Act but are not designed to be used for clearing legal differences or to interpret a legal matter. Please use the internet for detailed information on the matters.

The SA Constitution of the Republic of South Africa - No 108 of 1996 (including the Bill of Rights, Chapter 2) linked to the United Nations Declaration of the Rights of Older Persons 16 December 1996) protects the rights of older persons specifically in the following ways:

- Equality – Section 9
- Human dignity – Section 10
- Freedom and security – Section 12
- Privacy – Section 14
- Freedom of movement and residence – Section 21
- Housing – Section 26
- Health care, food, water, and social security – Section 27

Organization Related Acts

3.2 Companies Act - No 71 of 2008 and Non-Profit Companies (NPC) - No 71 of 1997

Introduction

The Act provides for the incorporation, registration, and management of companies. The Act encourages efficient and responsible management of the company. It defines the relationship between companies and their shareholders or members and the members of the company. It also makes provision for mergers and amalgamations as well as efficient rescue mechanisms of financially distressed companies. The Act provides for appropriate legal redress for investors and third parties and established standards for financial reporting and financial record keeping.

The *Company's Act* is a specialised field and experts must please be employed to resolve complicated matters.

Specifics

The sections of the Act that are of importance to governing bodies in the retirement industry are listed below. The reference to the sub-section is also given. Please note that these subjects, although not enforceable by law if you are not a company, should be applied in your governing body as good practices. Ensure that you are knowledgeable on the following sections:

- Establishing and amending the Memorandum of Incorporation (SS 16)
- Forms and standards of company records (SS 24)
- Access to information (SS 26)
- Accounting records (SS 28)
- Financial statements and annual financial statements (SS 29 & 30)
- Shareholders' or members' rights to be presented by proxy (SS 58)
- Shareholders' or members' meetings (SS 58 - 65)
- The Board and members of the Board (SS 66 -78)
- Secretary of the company (SS 86 – 89)
- Appointment of auditors (SS 90 – 93)

3.3 Sectional Titles Act (STA) - No 95 of 1986

Introduction

This Act supports the division of buildings into sections and common property and for the separate ownership in each section with joint ownership in the communal areas. It controls the rights of separate ownership of certain sections and the common property. It further regulates the transfer of ownership and the registration of sectional mortgage bonds. The establishment of a Body Corporate to control communal areas and set rules, are also covered.

Specifics

The Act is divided into parts and the content of each part of the Act is briefly given:

Part 1 - Introductory provision

This part of the Act confers the right to divide the building and land into sections and communal areas for owners to have a real right in the section and an undivided right in the common property. Ownership is registered with the deed's office.

Part 2 - Development of a scheme, plans and registration thereof

This section covers the rules and conditions that developers must comply with when developing a sectional titles scheme. It also gives the standards which the building plan must comply with.

Part 3 - Registration of ownership and common property

The conditions for registration in change of ownership are set in this section of the Act. It also prescribes the rules that must be followed to have the registration done.

Part 4 - Sub-division and consolidation

This rule is applicable where an owner wants to sub-divide a section or consolidate sections and is set out in this part of the Act.

Part 5 - Extensions

This covers the rules to be followed where an owner wants to extend his property or where the Body Corporate wants to extend land or property and is prescribed in the Act as well.

Part 6 - Exclusive use of common property of servitudes

This part of the Act sets out the procedures to be followed when exclusive rights of common property or servitudes are given to owners by the Body Corporate. Implied servitudes for passages, utility, and other supplies as well as adjacent and lateral support of the section are explained in this section.

Part 7 - Participation quotas

In this part the participation quota in cost of running the scheme is defined, namely the square meters of the unit divided by the square meters of all the units in the scheme.

Part 8 - Rules and Body Corporates

The Act prescribes that a Body Corporate must be established from the day the scheme is in operation and that it must set both management and resident conduct rules. The Body Corporate's rights, powers and obligations are also listed in this section.

Part 9 - Owners, administrators, and builders

The obligation of the owner to maintain his section and grant access to his section for repairs to be done is covered here. Ensuring the buildings, putting the Body Corporate under administration and a few other areas are covered in this section.

3.4 Sectional Titles Scheme Management Act (STSMA) - No 8 of 2011

Introduction

The aim of the STSMA is to improve the fiscal management and governance of Body Corporates. Please note that it replaces Section 37 to 48 of the *Sectional Titles Act* referred to in the paragraph above.

The STSMA is very comprehensive, and it is not possible to include each detail in this guide. The Act provides rules relating to the management and administration of a scheme by way of a Body Corporate. Schemes can be for residential, retail, commercial and industrial use, or a combination thereof. The purpose of sectional title is to allow different people each to obtain individual ownership rights relating to parts of the land and building. In terms of the Act, rules are provided for the management of the scheme and the conduct of owners using their sections and communal areas.

Members of the governing body of Body Corporates must please study the Act or the *Paddocks* booklet called '*Sectional Title Survival Manual*', (www.paddocks.co.za) to understand its implications and ensure that the governing body fully adheres to the Act.

Specifics

The following areas are specifically covered by the Act:

- Members of the governing body must be members of the Body Corporate or legally recognised representatives. A managing agent or their staff may not serve as members of the governing body. Members of the governing body serve for a year and members of the governing body may elect persons to serve as members of the governing body when a trustee steps down or is absent for a period.
- Management must act in line with the prescribed Act and rules and regulations and may not unreasonably interfere with the individual owners or occupants. Failure to act in accordance with the governance provisions of the Act has dire consequences and can result in penalties or even imprisonment.
- Assets must be insured according to specific rules as set out in the Act. Please refer to risk management Part 5 for specifics on insurance cover to be taken. Public liability insurance is also compulsory.
- A quorum at annual general meetings consists of 33.3% of the total votes in value with at least two persons present.
- A member may not act as a proxy for more than two members.
- A reserve fund must be established to finance future maintenance, repairs, and replacements on the common property. The fund must consist of 100% of the yearly budgeted levy income (called the administrative fund) and must be available in cash in a separate bank account to be used for emergencies. The Act specifies how the reserve should be built up over time. The funds used (see bullet point below) must be recovered from members immediately to replenish the reserve. Interest earned on the funds must be added to the reserve.

- A ten-year written maintenance plan must be prepared and approved at the annual general meetings. The reserve fund is used to pay for the planned future maintenance cost. Progress on the implementation of the plan must be reported at the AGM.

Body Corporates definition

This is an association of members who are registered owners of a unit under the scheme. The members appoint members of the governing body. The Body Corporate must establish both an administrative and reserve fund and members are required to contribute towards these funds. The Body Corporate must ensure the buildings, maintain the property, and may appoint agents to manage the scheme on behalf of the members of the governing body.

Management Rules

The rules as set out in the Act prevail unless the Body Corporate changes or adds rules which must be approved unanimously at either a special general meeting or an annual general meeting and then approved by CSOS.

The management rules cover the appointment of members of the governing body, who may or may not serve as members of the governing body, powers of the members of the governing body, and the chairperson's role. It also spells out how members' meetings must be conducted, the fiscal management of the Body Corporate and other areas such as how common property must be managed, rules around managing agents, record keeping and audits.

Conduct Rules

Conduct rules as set out in the Act prevail unless the Body Corporate changes or adds rules which must be approved at the annual general meeting with a special resolution (75% majority) and then also approved by CSOS.

The conduct rules, as part of the Act, cover rules relating to the keeping of pets, refuse removal, vehicles, damage to property, security of units, external appearance of property, washing, storage of materials, behavior, of residents including noise nuisance, etc.

Taxation Related Acts

3.5 Income Tax Act - No 50 of 1962

Introduction

Income tax is one of the many taxes that SARS introduced to fund government activities. The others are VAT, donations tax, estate duty, transfer duty, dividends tax, capital gains tax, employee tax, customs and excise duties, skills development levy and UIF. Income tax is a specialised field and accountants, and other experts must be consulted when making any VAT or VAT-related decisions in your governing body. Once the rules are established the execution is easy and should not be changed without the necessary advice.

Specifics

Rate of Tax

The corporate tax rate is currently set at 27%. Corporates include companies, trusts, public benefit companies, etc.

Income

All income is included in the tax calculation except income of a capital nature which is taxed under the capital gains tax (CGT), provision and exempt income which is specified in the Act.

Expenses

Expenses can only be deducted from income if incurred directly in the creation of income. Expenses have certain limitations, and certain expenses can only be deducted as specified in the Act, e.g., the depreciation of assets.

Income Tax Exemptions for Body Corporates, Share Block Companies and those managing the Interest common to All Members

Interpretation notes 64 sets out the tax applicable to these governing bodies. Please study the content.

Tax Exemption Guide for Public Benefit Governing Bodies

This guide provides general guidance on the approval and taxation of public benefit governing bodies and approvals under Section 18A to issue tax deductible receipts.

3.6 Value Added Tax Act (VAT) – No 89 of 1991

Introduction

VAT is an indirect tax on the consumption of goods and services whenever value is added in the supply chain. The tax is raised by SARS by requiring certain businesses to register and to charge VAT on the taxable supplies of goods and services. These businesses become *vendors* that act as an agent for government in collecting the VAT.

The *VAT Act* is a specialised field and accountants, and other experts must be consulted when making any VAT or VAT-related decisions in your governing body. Once the rules are established the execution is easy and should not be changed without the necessary advice. Governing bodies (vendors) making taxable supplies of more than R1m a year must register for VAT. Vendors making supplies of between R50k and R1m per year may apply for voluntary registration. VAT applies to all supplies, but only registered governing bodies can claim input tax against the VAT charged on supplies.

There are certain regulations and guidelines that are published to assist governing bodies with uncertain VAT matters and details as to how certain transaction should be treated.

Specific

Taxable Supplies

Taxable supplies on which VAT must be charged include any sale, rental agreement, instalment agreement and all other forms of supply unless they are specifically exempted. These supplies are either standard-rated supplies or zero-rated supplies. Exempt supplies are defined in Section 12 of the Act and include *inter alia* interest, supply of accommodation in a dwelling, the supply of services to a member of Body Corporate, share block scheme or a development that falls under the Housing Development Scheme for Retired Persons.

Apportionment of Input VAT

As a result of a governing body's exempt supplies, input tax must be apportioned unless a specific ruling is obtained from SARS. The apportionment formula is as follows: $A = B \times C/D$ where A is the deductible input VAT, B the amount of input VAT, C the value of all taxable supplies and D the value of all supplies.

Claiming Input VAT

Input VAT can only be claimed if the vendor who supplied the goods or services presents a VAT invoice which complies fully with SARS' requirements. Input VAT cannot be claimed on entertainment, sporting and social membership fees, purchase, lease or hire of a motor vehicle, or payment to any benefit funds such as pension and provident funds.

VAT Returns

VAT returns must be submitted on time as prescribed by your local SARS office.

Governing Bodies with a Non-profit motive, Non-Profit Organizations (NPO) and Non-Profit Companies (NPC)

These governing bodies do not automatically qualify for preferential tax treatments. The governing body referred to must therefore strictly follow all the VAT rules. Please refer to the '*Guide for Associations not for Gain and Welfare*' (enter VAT 414 onto search engine) for all the finer VAT points that you should be knowledgeable on.

Consumer Related Acts

3.7 Consumer Protection Act (CPA) – No 68 of 2008

Introduction

The Consumer Protection Act protects the consumer against possible exploitation.

Specifics

The Act specifically makes provision to:

- Promote a fair, accessible and sustainable marketplace where products and services offered are subject to minimum standards.
- Set consumer information standards.
- Prohibit certain unfair marketing and business practices.
- Promote responsible consumer behaviour.
- Protect the consumer when entering into a transaction or agreement by enforcing a framework of best practice.
- Establish a National Consumer Commission to arbitrate on issues affecting the consumer.
- Establish a consumer tribunal.

The Act specifically protects the following:

- The economic interest of consumers.
- Access to information to make an informed decision.
- The consumer's health and well-being.
- The freedom of the consumers to associate and form groups to advocate and promote their common interest.
- Participation in decision making by the consumer.

The governing body should get specific advice to ensure it complies with the Act as far as the supply of goods and services to the consumer is concerned.

3.8 Promotion of Access to Information Act (PAIA) – No 2 of 2000

Introduction

The *Promotion of Access to Information Act (PAIA)* creates a framework to protect the right of access to information as enshrined in Section 32 of South Africa's Constitution. The purpose of the Act is to promote a culture of transparency, accountability and good governance in all companies and governing bodies. This gives a person or governing body the right to lodge a request for information from the governing body.

Specifics

Private bodies or private companies that employ less than a certain number of staff members or has a turnover of less than a specific amount, are exempt from the regulations. Once the governing body has established whether it must comply with this Act, it is advisable to obtain proper advice on what needs to be done specifically to comply.

The following summary has been supplied by Maphalla Mokate Conradie Inc, Attorneys. We thank them for their assistance.

Purpose of the Act:

PAIA was established to promote the right of access to information and to promote transparency and accountability within both the public and private sectors of society.

How do I make a PAIA request?

A request for access to information is made on the prescribed forms.

Against whom can a PAIA request be made?

The request can be made to both public and private bodies. The Requester has a right of access to certain types of records held by both public and private institutions, companies, or bodies. The PAIA request must be made on the correct form (Form A for public bodies, Form C for private bodies), and addressed to the Information Officer or Deputy Information Officer of the public or private body, or to the Head of the public or private body. The PAIA request form must be hand-delivered, posted, faxed, or sent via email to the public or private body to which the request has been made.

Who can make a PAIA request?

Any person is allowed to make a request under *PAIA*. The requester may be a public body that is considered a juristic person, may make a request for access to records held by private bodies, only if the public body is acting in the interests of the public; and if the records are required to fulfil or protect any rights other than those of the public body.

What is the cost for making a PAIA request?

Requesters are required to pay a fee when requesting access to records from both public and private bodies. The fee for requesting records from a public body is R35, while the fee for requesting records from a private body is R50.

How long does the Information Officer have to respond to the request?

A PAIA request must be responded to by the public or private body within 30 days after receiving the request. The Information Officer may request an extension for a period of no more than 30 days.

3.9 Protection of Personal Information Act (POPIA) – No 4 of 2013

Introduction

This Act that came into effect on 1 July 2020 with a grace period of one year, gives effect to the right of privacy and safeguarding of personal information once processed by a third party, regulates the way information may be processed, provides persons with rights and remedies of personal information not used, and provides for the establishment of an Information Regulator.

Specifics

All South African institutions must conduct themselves in a responsible manner when collecting, processing, storing, and sharing another entity's personal information and the Act is intended to hold them accountable should they abuse or compromise personal information in any way.

The POPIA involves three parties (who can be natural or juristic persons):

- The data subject: the person to whom the information relates.
- The responsible party: the person who determines why and how to process.
- The operator: a person who processes personal information on behalf of the responsible party.

Rules for Processing or Use of Information

Personal information may only be processed if the person consents to the processing, or the processing is necessary to carry out actions for the conclusion or performance of a contract. A person may object to the use of his personal information in a prescribed manner and the person receiving the information must then refrain from using the information.

You may collect and use information in relation to a data subject that is available in a public record, and it is necessary to protect your own interests. Information collected must be for a specific, explicitly defined, and lawful purpose relating to the business. The person providing the information must be aware of the purpose for which the information is collected.

Record Keeping

Records may not be retained for longer than necessary. Records must be kept for periods as required by the Act. Where records are deleted, it must be done in a manner that prevents

reconstruction. You are entitled to keep records of personal information for historical, statistical or research purposes if you have established safeguards to prevent the records being used for any other purposes.

Processing Limitations and Quality

The information collected may only be further (extra) processed if it is in line with the original purpose it was collected for or with the consent of the provider. Personal information provided must be accurate, complete, and not misleading, and updated as and when necessary.

Openness

You must ensure that the person providing the information is aware of the information being collected, the company that is collecting the information, the purpose of the information, etc. See Section 17 for the full list.

Security Safeguard

The company that collects the information must secure the integrity of the information and take appropriate steps to prevent loss, damage, or unauthorised destruction of or unlawful access to the information.

To give effect to this the collector must identify all internal and external risks to personal information in its possession, establish appropriate safeguards against these risks, regularly verify that the safeguards are effectively implemented, and continuously update the safeguards in response to new risks and deficiencies in previous safeguards.

The collector must have due regard to generally accepted information security practices. The operator/s of the collector can only process the information with the knowledge and authority of the collector and treat the information as confidential and not disclose it. This must be governed by a written contract. If the collector believes that the information in his possession has been accessed or acquired by an unauthorised person, the provider of the personal information and the Regulator must be notified in writing. As much information about the unlawful access must be provided for the provider to take the necessary preventative steps.

Access to Information and the correction thereof

The provider of information has the right to ask the collector what information is kept and who else apart from the collector has access to his information. The provider of information may ask the collector to correct or delete personal information or delete records which the collector is no longer authorised to retain.

Prohibition on Processing

Unless specifically permitted you may not collect information concerning a child or religious beliefs, race (unless complied by law), trade union membership, political opinion, health, sexual orientation, or criminal behaviour. There are various exemptions on these prohibitions.

The Eight Basic Principles

People often provide information for one reason and do not realise that it may be used for other purposes as well. Therefore, POPIA prescribes eight specific principles for the lawful processing and use of personal information. In a nutshell, the POPIA principles are:

1. The responsible party must ensure that the 7 principles set out below are in fact complied with.
2. The processing of information is limited which means that personal information must be obtained in a lawful and fair manner.
3. The information can only be used for the specified purpose it was originally obtained for.
4. The POPIA limits the further processing of personal information. If the processing takes place for purposes beyond the original scope that was agreed to by the data subject, the processing is prohibited.
5. The person who processes the information must ensure the quality of the information by taking reasonable steps to ensure that the information is complete, not misleading, up to date and accurate.
6. The data subject and the Information Regulator must be notified that the data is being processed and the data subject must know for what purpose the information is being used.
7. The person processing the data must ensure that the proper security safeguards and measures to safeguard against loss, damage, destruction and unauthorised or unlawful access or processing of the information have been put in place.
8. The data subject must be able to access the personal information that a responsible party has on them and must be able to correct the information.

Checklist to ensure Compliance

The following steps will ensure compliance to the POPI Act:

1. Read through the above summary of the Act or download the Act and familiarise yourself.
2. Communicate with staff and make them aware of the POPI Act and its importance.
3. Appoint an Information Officer. Some senior person in the Administration Department is ideal. He/she needs to be aware of the Act and must have a plan to ensure compliance to the Act. A quick audit of the current information on file, who supplied the info and how it is protected is of importance. Weaknesses must be addressed. Another good idea is for information to be classified and access thereto restricted. The responsibility of the information Officer is:
 - Encourage compliance with the conditions for the lawful processing of personal information.
 - Deal with requests made pursuant to POPIA
 - Work with the Information Regulator in relation to investigations.
 - Ensure compliance by the body/entity with the provisions of POPIA.
 - Develop, implement, and monitor a compliance framework for the POPIA compliance within such entity.
 - Ensure that a personal information impact assessment is done to ensure that adequate measures and standards exist to comply with the conditions for the lawful processing of personal information.
 - Develop, monitor, maintain and make available a PAIA manual as prescribed in terms of POPIA and PAIA, if not exempted.
 - Develop internal measures and adequate systems to process requests for access to information.
 - Ensure that internal awareness sessions are conducted.
4. Compile an 'Information protection Policy and Procedures' guideline. This document must cover:
 - Introduction and how the organisation will adhere to the Act.
 - Set the rules as to who has access to personal information and what each staff member may use the information for.
 - Explain how data is protected and how access to the information is restricted.
 - Set out the steps that will be taken in case of an electronic data breach.
 - Explain how accessing information is traced for audit purposes.
 - Set out how complaints are to be dealt with.
 - Explain how new staff will be introduced and where necessary be trained.
 - Provide for funds and especially time to ensure compliance to the Act.
5. Communicate with residents. See example of a letter below.

6. Communicate with service providers to residents and define the info they may store and how to protect this. It is important that guidelines for Resident's Committees must ensure that personal information regarding co-residents must not be discussed. This includes attempting to access information regarding residents from staff.
7. The retention of information per category and the destruction policy needs to be explained.
8. Appoint a Trustee member, Board member to oversee the initial implementation of the policy and procedures and thereafter to ensure the systems are maintained.
9. Like most things in life, get to the crux of the issues and do not over complicate the implementation of the act.

3.10 National Credit Act (NCA) – No 34 of 2005

Introduction

The purpose of this Act is to promote and advance the social and economic welfare of South Africans, promote a fair, transparent, competitive, sustainable, responsible credit market and to protect consumers, by:

- Promoting accessibility to credit to those who have historically been unable to access credit.
- Ensuring consistency between different credit products and different providers.
- Encouraging responsible borrowing, avoidance of over-indebtedness and discouraging reckless credit granting.
- Promoting equity in the credit market by balancing the respective rights and responsibilities of credit providers and consumers.
- Providing consumers with education about credit and consumer rights by providing consumers with adequate disclosure of standardised information to make an informed choice and providing consumers with protection from deception and from unfair or fraudulent conduct.
- Improving consumer credit information and reporting and regulation of credit providers.
- Addressing and preventing over-indebtedness of consumers and providing mechanisms for resolving over-indebtedness by the consumer.
- Providing for consistent and accessible systems of consensual resolution of disputes.
- Providing for a consistent and harmonised system of debt restructuring, enforcement, and judgment, which places priority on the eventual satisfaction of all parties.

Specifics

Application of Act

Subject to certain sections, the Act applies to every credit agreement between parties dealing at arm's length. There are many exceptions and definitions of agreements that do not fall under the Act and readers are advised to get legal advice if they are not sure or are looking at an opportunity to exclude a particular agreement from the Act.

A pawn transaction or discount transaction, an incidental credit agreement, an instalment agreement, a lease, a mortgage agreement, or secured loan all fall under the provision of the Act. Extending payment to a consumer for goods and services delivered does not result in being a credit agreement even if costs are added to the consumer's account.

Establishment of National Credit Regulator

The National Credit Regulator is established and is responsible for conducting the function of an independent and impartial arbitrator. The Regulator is responsible for:

- Developing the credit market in line with the Act's overall objectives and making it more accessible.
- Doing research on the industry and sharing the information.
- Enforcing registration with the Regulator of credit providers and credit bureau and debt councillors.
- Ensuring good governance including the appointment of the controlling body, CEO, and inspectors.

National Consumer Tribunal

The National Consumer Tribunal adjudicates in any application that may be made to it in terms of the Act, and makes any order provided for in the Act relating to allegations of prohibited conduct by determining whether prohibited conduct occurred and, if so, imposing a remedy provided for in the Act.

Consumer Credit Policy

The following basic credit principles are covered by the Act:

- **Protection of consumer credit rights**

A credit provider must not directly or indirectly discriminate against the consumer by penalizing the consumer, alter the terms or conditions of a credit agreement, or take any action to accelerate, enforce, suspend, or terminate a credit agreement with the consumer.

- **Right to apply for credit**
Every adult person, every juristic person or association of persons has a right to apply to a credit provider for credit. A credit provider has a right to refuse to enter into a credit agreement with any prospective consumer on reasonable commercial grounds that are consistent with its customary risk management and underwriting practices.
- **Protection against discrimination**
Relative to the treatment of any other consumer or prospective consumer, a credit provider must not unfairly discriminate directly or indirectly against any person on grounds set out in the Constitution, the *Promotion of Equality and Prevention of Unfair Discrimination Act (No 4 of 2000)*.
- **Right to reasons for credit being refused**
- On request from a consumer, a credit provider must advise that consumer in writing of the dominant reason for refusing to enter into a credit agreement. The credit provider may offer the consumer a lower credit limit.
- **Right to information in official language and in plain and understandable language**
A consumer has a right to receive any document that is required in terms of the Act in an official language that the consumer reads or understands.
- **Right to receive information**
Every document that is required to be delivered to a consumer in terms of this Act must make the document available to the consumer through one or more of the following ways: fax, email or in the manner the consumer wants.
- **Right to confidential treatment**
Any person who receives, compiles, retains, or reports any confidential information pertaining to a consumer or prospective consumer must protect the confidentiality of that information.
- **Right to access and challenge credit records and information**
When a consumer requests a credit report, the report must disclose the same information that will be displayed to other parties when such report is provided. If the accuracy of the consumer credit information has been challenged by a consumer, the person to whom the challenge has been made must take the steps to rectify the information. The consumer must be compensated by the person that reported incorrect information.
- **The consumer's right to rescind a credit agreement**
A consumer may terminate a credit agreement within five business days after the date on which the agreement was signed by the consumer tendering the return of any money or goods or paying in full for any services received by the consumer in respect of the agreement. When a credit agreement is terminated the credit provider must refund any money the consumer has paid under the agreement but may require payment from the consumer for reasonable costs.
- **The consumer's or guarantor's right to settle agreement**

A consumer is entitled to settle the credit agreement at any time, with or without advance notice to the credit provider. Unpaid balances and unpaid interest must be paid.

- **Right to participate in hearing**

Persons affected and with an interest in the credit agreement may participate in a hearing in person or through a representative and may put questions to witnesses and inspect any books, documents or items presented at the hearing.

The *National Credit Act* (No 34 of 2005) has been promulgated to protect the consumer with the approval of credit by the credit supplier. Your governing body must be aware of the Act and apply the Act if a loan or other credit terms are being entered. Please note that a normal invoice for levies, interest or related cost does not fall within the ambit of the Act.

3.11 Debt Collectors Act (DCA) - No 114 of 1998

Introduction

A Council for debt collection has been established to exercise control over the occupation of debt collectors. Only attorneys and their personnel may act as debt collectors unless that person or legal entity is registered with the Council. Disqualification of persons and legal entities are set out in the Act. A certificate is issued, and a register is kept by the Council. Fees are payable by a registered person.

Specifics

A code of conduct is published, and members must keep to this code. The Council can withdraw any certificate if the code of conduct is contravened by its members and investigations into the conduct of members are done where allegations are reported.

A debt collector may only recover the capital amount due, interest on the amount and the necessary cost incurred in collecting a particular debt and the fees as established by the Council from time to time.

A trust account for collections and proper books must be kept and the annual financial statement must be audited and submitted to the Council.

3.12 The Financial Intelligence Centre Act (FICA) – No 38 of 2001

Introduction

The FICA is designed to combat money laundering and to prevent criminals from depositing their ill-gotten gains into a bank account. Accountable institutions must, when dealing with clients, verify the clients and/or their representatives, report suspicious transactions, keep records of transactions and information, and formulate and implement internal rules on the above.

Offences and penalties are extremely high, and the governing body must ensure compliance with the Act.

From time-to-time governing bodies receive requests for the issuing of confirmation of address. The levy account can be used for this, but the governing body must strictly ensure that the account is in the name of the registered owner of the property. Integrity of documents issued by the governing body is not negotiable.

Specifics

The Financial Intelligence Centre

A Financial Intelligence Centre has been established with the main objective of identifying proceeds of unlawful activities, combating money laundering activities and the financing of terrorist and related activities. The other objective of the centre is to make information collected by it available to various other authorities such as the NPA, SARS, Public Protector, etc.

Money Laundering and Financing of Terrorist and Related Activities

Banks and other financial institutions have strict rules to comply with, report on and retain records when opening bank accounts and when doing transactions with or on behalf of persons and businesses. Property and cash transactions are specifically earmarked as high-risk areas. Stringent risk management and compliance programmes must be run by these institutions to comply with the Act. The Centre issues directives regarding the application of the Act or what is required to give effect to the Centre's objectives from time to time. The Centre may request information from motor vehicle traders, Kruger Rand dealers and domestic and foreign prominent and influential people on their dealings with certain people and governing bodies. The Centre appoints inspectors to perform general and specific investigations.

Suspicious and Unusual Transactions

A person who carries on a business or oversees or manages a business or who is employed by a business and who knows or ought reasonably to have known or suspected that the business has received or is about to receive the proceeds of unlawful activities, property which is connected to an offence relating to the financing of terrorist or money laundering activities must report this information to the Centre.

Conveyance of Cash to or from the Republic of South Africa

A person who intends conveying an amount of cash or a bearer negotiable instrument more than a prescribed amount to or from the Republic must report the prescribed particulars.

Electronic Transfers of Money to or from the Republic of South Africa

If a bank or financial institution sends money more than a prescribed amount out of the Republic or receives money more than a prescribed amount from outside the Republic on behalf of or on the instruction of another person, it must report the transfer.

Protection of Persons making Reports

No action, whether criminal or civil, will be laid against an institution, supervisory body, SARS, or any other person complying in good faith with a provision of the Act. The Centre imposes administrative sanctions on non-compliances.

3.13 Community Schemes Ombud Services Act (CSOSA) – No 9 of 2011

Introduction

The purpose of the Act is to regulate all 'community schemes. The *CSOS Act* applies to any governing body where some or the total of the land area and buildings in the residential area are shared. This includes section title schemes, homeowner or resident associations, housing schemes for retired persons, share block companies and housing co-operatives.

Specifics

- The CSOS role is to promote good governance, and to regulate, monitor and control the quality of the governing body's documentation. The service provided by the Ombudsman endeavours to protect the assets of members and to provide equitable treatment of all members of the governing body. One of the most important advantages of the CSOS is that inexpensive dispute resolution can now be obtained by members.
- For the CSOS to ensure good governance the founding documents, which will include the rules and regulations applicable to members, must be lodged with the CSOS. They can request that the document be updated, changed and re-lodged where appropriate. Any changes to the rules by sectional title schemes need to be authorised by the CSOS before they are enforceable.
- The Act compels the executives of the governing body to educate themselves regarding the governing body, its affairs, and activities as well as all applicable legislative and governance documents. The executives must further obtain the necessary information and advice from time to time to enable them to make conscientious and informed decisions and must exercise and give an independent opinion on matters to be decided on. Due diligence in relation to the business and good preparation before attendance of the committee meetings is also required.
- The Act obliges governing bodies to arrange for fidelity insurance to cover it against the risk of possible financial loss due to dishonesty and fraud by those involved in the scheme. The executives, employees, agents, and contractors must be covered by the policy. The minimum amount to be insured is the funds at hand at year end plus 25% of its operating budget for the current year. Certain insurance conditions in the policy are specifically excluded. Proof of insurance by third parties like agents and contractors is sufficient for the governing body not to insure directly.
- The CSOS can be approached for dispute resolution if it cannot reach an agreement amongst themselves. Financial issues, management matters, behavioural conduct, governance, conduct of meetings, management agent services, matters pertaining to private and common areas and general disputes can be referred to the CSOS for resolution.
- The governing body must register with the CSOS and must submit a range of documents and information as set out in the Act. These include *inter alia* the founding documents, governing body member details, bank information, managing agent information, etc. A whole range of documents must be enclosed.
- An annual return, the financial statements, and amendments to the information submitted at the day of registration must be filed with the CSOS within four months after each financial year end.

- For the CSOS to be able to provide the necessary services a prescribed levy is payable. The levies payable is based on a percentage of the resident levies less a fixed allowance but capped at a specific level. The levies are paid quarterly but recovered from residents monthly. Discounts and waivers apply to residents who cannot afford the levies. Currently the fees are calculated as follows: 2% of the basic levy above R500 and capped at R40 per month.

The CSOS website and the information that they distribute is more than adequate to understand what is needed to comply with the requirements and the forms to be submitted. Please note that retirement facilities can apply for the waiver of the CSOS fees. This needs your attention.

Property Related Acts

3.14 Housing Development Schemes for Retired Persons Act (HDSRP)

Introduction

The HDSRP Act regulates the acquisition (buy, grant, donate, lease, exchange) or offered for acquisition, of an interest in a 'housing development scheme' for retired persons (50 years and older) or where the majority are retired persons, and provides for protection on matters relating to the scheme. The Act covers full title, life rights, sectional title units and share-block schemes but not time-sharing arrangements. The Act falls under the Minister of Economic Affairs.

Specifics

Some of the more key areas addressed by the Act are:

- The exact contents and minimum requirements of a contract of acquisition is described in the Act.
- If any facility contemplated is to be maintained for the care of debilitated persons, the facility shall be deemed to be a home for the aged as defined in the Aged Persons Act, 1967.
- Subject to certain exclusion and notwithstanding any other law, no developer may by virtue of a contract receive any consideration or any part thereof, unless an architect or a quantity surveyor has issued a certificate that the housing development scheme concerned has been erected substantially in accordance with any applicable officially approved building plans and town planning scheme and applicable local authority by-laws, and is sufficiently completed for the purposes of utilization of the housing interest concerned; and a copy of that certificate and a copy of the contract have been furnished to the purchaser concerned.

- The definition of life rights is defined in section 1 of the amended act of 1990.
- After a housing interest has been transferred to or has otherwise been vested in a retired person by virtue of a contract, no person shall alienate that interest to any person other than a retired person or the spouse of a retired person except with the written consent of all the holders of housing interests in the housing development scheme concerned.
- The holder of a right of occupation shall for the purposes of any law have the same rights as those conferred on a lessee registered against the title deed of the leased land, and such rights shall rank in priority over any other right whether such other right has been registered or endorsed against the title deed and irrespective of the time when such other right was registered or endorsed.
- The protection of the purchaser if he/she is deemed to have terminated the contract. In this case the conventional penalties act will apply to the contract.
- Unless at least 75 per cent of the holders of rights of occupation in a housing development scheme consent thereto the land concerned may not be alienated free from such rights: Provided that the holders of the rights of occupation shall in the case of such an alienation have preferent claims in respect of the proceeds of the sale of the land, which claims shall, notwithstanding the provisions of any other law rank in priority over the claim of any mortgagee, be equal to the amount paid in terms of the right of occupation. Any alienation taking place without the consent of the holders shall be invalid.
- The condition for selling the land in a housing development scheme and the preferential rights of the life right owner.
- An endorsement against the title deed prevents the registration of bonds against the property.
- The management association is independent from the owner and is a legal entity on its own and is responsible for the management, control, and administration of the scheme. A managing agent may be appointed to perform these duties.
- The Minister may exempt the parties to the contract from any provisions of the Act.

Managing Association

From the first time a developer alienates a housing interest, there shall be a Managing Association in place with the developer and the purchasers are members with every new purchaser of new or existing housing interest becoming a member.

The Managing Association has the following duties and rights: The Association operates very much in line with Bodies Corporate and Homeowner's associations.

- Draft an appropriate constitution for the association.
- Enforce the rules of the scheme. Change these rules as time goes on.

- Control, administer and manage the land, common property, facilities, and services for the benefit of all members
- Sue on contracts, damages and other matters arising out of the performance of the association's functions.
- Ensure all insurances are in place.
- Maintain common property.
- Comply with all property relating laws and municipal by-laws
- Maintain the infrastructure if it is the schemes responsibility e.g., electric cables, water, storm water and sewerage.
- Prepare a budget for expenses and establish the levies payable by members to cover the cost. These levies are recovered from Members based on the floor area of the unit in relation to the total floor areas of all accommodation.
- Borrow and invest money and open and close banking accounts
- Enter into agreements to ensure the services necessary.
- Appoint employees.
- Prohibit the transfer of any housing interest if the levies are not paid up
- Hold AGM and special meetings where necessary.
- Appoint a Managing agents to manage the affairs of the Association.
- Establish the interest rate to be charged on overdue levy accounts.
- Add other limitations to the compositions of the Managing Association's Board or operating matters as members see fit.

Exemptions

Exemptions from the act may be applied for with the Minister of Economic affairs.

3.15 Property Practitioners Act (PPA) – No 22 of 2019

Introduction

The objective of the Act is to provide for the regulation of property practitioners, the establishment of an Authority, the protection and promotion of the interests of consumers, a dispute resolution mechanism in the property market, the training and development of property practitioners, provide for the licensing of property practitioners, provide a just and equitable legal framework for the marketing, managing, financing, letting, sale and purchase of property and to promote meaningful participation of historically disadvantaged individuals and provide for transformation.

Specifics

Property Practitioners Regulatory Authority

A *Property Practitioners Regulatory Authority* (Authority) is in place and provides regulatory mechanisms in respect of the financing, marketing, managing, and consumer education relating to property matters, and does all that is necessary or expedient to achieve the objectives.

More specific functions of the Authority are to regulate the conduct of property practitioners as far as marketing, managing, financing, letting, renting, hiring, and the sale and purchase of property are concerned, regulate and ensure that there is compliance with the provisions of the Act, ensure that the consumers are protected from undesirable and sanctionable practices, regulate any other conduct which falls within the ambit of the Act, provide for the education, training and development of property practitioners, educate and inform consumers about their rights and implement measures to ensure that the property sector is transformed.

Property Sector Transformation

The Authority implements measures to progressively promote an inclusive and integrated property sector, assess the state of transformation within the property sector, and create such mechanisms for the continuous monitoring and evaluation of the sector performance on transformation. State bodies must already utilise the services of property practitioners who comply with broad-based black economic empowerment, employment equity legislation and policies.

Property Sector Transformation Fund

A Property Sector Transformation Fund is established into which government grants are paid. Economic transformation is facilitated by the accessibility of finance for property ownership, property development and investment to enable meaningful participation of historically disadvantaged individuals.

Property Sector Research Centre

A Property Sector Research Centre has been established which conducts market research in partnership with the National Research Foundation and institutions of higher learning. The

Property Sector Research Centre aims to increase the national scientific research and innovation capability and stimulate the generation of new knowledge in the property sector.

Inspectors

Inspectors are appointed and identified by a card issued to that inspector and he/she may, at any reasonable time and without prior notice, conduct an inspection to determine whether the provisions of this Act are being or have been complied with, and for that purpose:

- May without a search warrant enter and inspect any business premises.
- Require the property practitioner to produce to him or her the/a fidelity fund certificate.
- Produce any book, record or other document related to the inspection.
- Furnish him or her with such information in respect of the fidelity fund certificate, book, record, or other document as the inspector may determine.
- Examine or make extracts from, or copies of, any such fidelity fund certificate, book, record, or other document.

An inspector may, on authority of a search warrant, enter and search any premises if there are reasonable grounds for believing that there is an article or record therein that has a bearing on the inspection. The Inspector may examine any article or record that is on the premises, request any person on the premises to unlock or otherwise provide unhindered access to any safe or storage facility.

Compliance Notices

Fines in respect of each type of contravention of the Act are established. Compliance notices are issued to those contravening this Act, calling on that person to comply within a period specified in the compliance notice and pay the fine issued. Any person may lodge a complaint with the Authority against a property practitioner in respect of financing, marketing, management, letting, hiring, sale or purchase of property. After receiving the complaint, the Authority may require the complainant to submit further information or documentation in relation to the complaint.

Mediation, Adjudication and Grievances

A complaint may be resolved through a mediation process. If mediation fails, the mediator issues a certificate stating the outcome of the mediation and which serves as an official dispute declaration. The matter must now be adjudicated. Any person who is aggrieved by the decision of the adjudicator may appeal against such decision to the Authority in the prescribed format.

Funding of the Authority

The funds of the Authority consist of monies appropriated by Parliament, fees paid by property practitioners, monies derived from investments and all other monies which may accrue to the Authority.

Property Practitioners Fidelity Fund

The fund, known previously as the Estate Agents Fidelity Fund, continues to operate. The following is paid into the Fund: all fees in accordance with the Act, income derived from the investment of monies in the Fund, insurance claims, interest paid to the Fund and any other monies accruing to the Fund from any other source.

Subject to the provisions of the Act, the Fund is there to reimburse persons who suffer pecuniary loss by reason of theft of trust money committed by a property practitioner. A claim for compensation from the Fund must be lodged with the Authority in the prescribed manner.

Indemnity Insurance

The Authority arranges insurance to cover property practitioners' liability to members of the public on the grounds of malpractice as determined by the Authority.

Fees payable by Property Practitioner

A property practitioner must annually pay to the Fund a prescribed application fee for a Fidelity Fund certificate in accordance with the provisions of the Act.

Fidelity Fund Certificates

Every property practitioner must every three years apply to the Authority for a Fidelity Fund certificate. The applicant must meet all the requirements provided for in or under this Act. Penalties are payable for not complying and late payments.

Mandatory display of Fidelity Fund Certificate

A holder of a Fidelity Fund certificate must prominently display the Fidelity Fund certificate in every place of business from where business is conducted to enable consumers to easily inspect it.

Trust Accounts

Every property practitioner must open and keep one or more separate trust accounts and must immediately after opening a trust account appoint an auditor, provide the Authority with all information in respect of such accounts. Despite the above conditions any property practitioner may invest in an interest-bearing account any monies which are not immediately required for any particular purpose if information in respect of such accounts is provided to the Authority.

A property practitioner must retain all money deposited until lawfully entitled to such money or is lawfully instructed in writing to make payment therefrom to any person. A bank which manages a trust must from time to time submit a certificate to the Authority declaring interest in respect of that account.

Duty of Property Practitioner to keep Accounting Records and other Documents

Despite any other law, a property practitioner must keep for a period of five years all documents exchanged with the Authority, correspondence with its employer or franchisor, any agreement, mandate, mandatory other documents relating to the financing, sale, purchase or lease of a property, any advertising or marketing material related to it carrying on the business of a property practitioner, and any other documents prescribed by the Minister.

In addition to the duties set out above the practitioner must keep accounting records that are necessary to fairly reflect and explain the situation of all monies received or expended including monies deposited into the trust as well as other interest-bearing accounts, of its assets and liabilities, of its financial transactions and the financial position of its business. These records must be audited by an auditor within six months after the final date of the financial year.

Property Practitioner not entitled to Remuneration in certain Circumstances

A property practitioner is under no circumstances entitled to certain remuneration or other payment if not in possession of a Fidelity Fund certificate. These receipts must be paid over to the Fidelity Fund, and any affected seller, purchaser, lessor, or lessee may within three years submit a written claim for the money. Any amount paid to the Fund which is not claimed within three years irrevocably becomes the property of the Fund.

A conveyancer may not pay any remuneration or other monies to a property practitioner unless that property practitioner has provided the conveyancer with a certified copy of its Fidelity Fund certificate.

Mandatory Indemnity Insurance

The Minister may prescribe indemnity insurance which a property practitioner must take out and maintain.

Limitation on Relationships with other Property Service Providers

A property practitioner may not practise in association with any person who is prohibited by any law, any professional code of conduct, any code of ethics or protocol, report, or charter on corporate governance, from doing so. It may not enter any arrangement, formally or informally, whereby a consumer is obliged or encouraged to use a particular service provider including an attorney to render any service or ancillary services in respect of any transaction of which that property practitioner was the effective cause. The Minister may by regulation prohibit any relationship which could harm the interests of consumers.

Code of Conduct

A code of conduct for property practitioners is published on the website of the Authority. A property practitioner must on request from a consumer provide him or her with a copy of the code of conduct. Practitioners must always apply the code.

Sanctionable Conduct

A property practitioner is guilty of sanctionable conduct if in the same transaction he/she acts on behalf of two or more persons whose interests are not in all material respects identical in respect of that transaction, unless all affected persons in writing agree thereto.

Undesirable Practices

The Minister declares from time-to-time particular business practices in the property market undesirable and consequently prohibited. These prohibition of practices might be introduced where the right of every citizen to freely choose their trade, occupation or profession, damaging the relations between property practitioners, or any specific property practitioner, on the one hand, and any specific consumer, category of consumers or the general public on the other hand,

unreasonably prejudicing any consumer or category of consumers, deceiving any consumer or category of consumers, or unfairly affecting any consumer or category of consumers.

Franchising

A franchisee property practitioner may not carry-on business under the name of a franchise unless a franchisee property practitioner is the holder of a Fidelity Fund certificate. A franchisee property practitioner must disclose clearly and unambiguously in all his, her or its written communication, advertising, and marketing materials that it operates in terms of a franchise agreement, as well as the name of the franchisor.

Prohibition on Conduct to Influence issue of certain Certificates

A property practitioner may not in any way offer or receive financial or other incentive to, or otherwise influence, a person who at the request of a seller or lessor issues a certificate required by law in respect of the condition or defects of electrical wiring, the presence of vermin, the presence of water or damp, or any other relevant matter or condition which may be provided for in any law.

Mandatory Disclosure Form

A property practitioner must not accept a mandate unless the seller or lessor of the property has provided him or her with a fully completed and signed mandatory disclosure in the prescribed form and provided a copy of the mandatory disclosure form to the prospective purchaser or lessee who intends to make an offer for the purchase or lease of a property.

Agreements

An agreement to sell and purchase or to let and hire property must be drafted by the developer or seller at its own account. The Authority publishes from time to time an updated version of guideline agreements on its website.

Consumer Education and Information

The Authority from time to time conducts campaigns to educate and inform the public of their rights in respect of property transactions, and property practitioners of their functions, duties, and obligations.

Penalties

A person convicted of an offence in terms of this Act is liable to a fine or to imprisonment for a period not exceeding 10 (ten) years.

3.16 Sectional Titles Act (STA) – No 95 of 1986

Refer paragraph 3.3 of this document.

3.17 Sectional Titles Schemes Management Act (STSMA) - No 8 of 2011

Refer paragraph 3.4 of this document.

3.18 Share Blocks Control Act (SBCA) – No 59 of 1980

Introduction

This Act states that a company operates a share block scheme if any share of the company is linked to a right to use immovable property or any part of immovable property. In this case the sale agreements must comply with the provisions of the Act. The name of the company must include the words 'share block'.

A share block company which is to be formed may not receive any consideration in respect of any right to a share in the company from any person other than a person who will be a share block developer in relation to the company. The person so paying entrusts to a practitioner to keep in the trust account of the practitioner.

Notwithstanding, anything to the contrary contained in the MOI, the shareholders have the right of representation on the governing body of members of the governing body as follows:

- Do not exceed ten shareholders in number the right to appoint at least one of the members of the governing body.
- Exceed ten shareholders in number, the right to appoint at least two members of the governing body.

Specifics

Ownership

The property is registered in the name of the Share Block Company and the buyer merely buys shares and by obtaining these shares the buyer acquires the right to occupy the apartment referred to. Rights and duties are regulated by the share block company's MOI, and by a use agreement. One of the downfalls is if the Share Block Company is declared insolvent, you may lose the rights to your portion of the property.

Trust Funds

The Act requires that the trust fund (for deposits made by buyers) be kept separately from all other money and that frequent audited statements be submitted to the Registrar of Companies. Trust fund money may be used only for reducing the company's loan obligation.

Shareholder Rights and Obligations

Each share block is linked to the right to occupation and voting rights are allocated in proportion to the number of shares held.

Unless it was stated as an intention at the time the shares were offered, a share block company may not increase its loan obligation without the approval of at least 75% of the shareholders holding at least 75% of the number of votes.

Shares in a share block company can be bought either directly from the company or from an existing shareholder, in which case all shares, rights and obligations are transferred to the new owner.

Every shareholder makes a monthly levy contribution for the general expenses of the scheme. The amount payable by each shareholder is usually fixed in relation to the number of shares held, and is used for the control, management, administration, upkeep, and repair of the scheme. A Share Block building may not be sold without the approval by special resolution passed by at least 75% of the shareholders present.

Maintenance

Repairs and maintenance falling inside of a unit are the responsibility of the shareholder. A share block company shall in respect of the share block scheme it operates establish and maintain a levy fund sufficient for the repair, upkeep, rates and taxes, insurance, utilities, control, management, and administration of the company and of the immovable property. The property must be insured by the company, although shareholders themselves must ensure that the contents of their units are insured.

Agreement Breaches

The share block agreement remains in force for as long as a member hold shares or until the shareholder is entitled to transfer the shares. If a shareholder is in breach of the agreement the company may take action to repossess the shares and premises.

Conversion of Rights

Shareholders in a share block company can acquire title to the units they occupy only if the scheme is converted to sectional title.

3.19 Rental Housing Act (RHA) – No 50 of 1999

Introduction

One of the main objectives of the RHA is to promote and facilitate a better relationship between the proprietor and tenant by clearly and separately outlining the rights and obligations of both parties within the rental housing market. This is done to further protect the proprietor and tenant from illegal or unfair practices.

Specifics

Tenants

The tenant is obliged to:

- Pay the proper amount of rent in the proper commodity at the proper place and time.
- Take good care of the property and not use it for other purposes than for which it was let.
- Restore the property to the same condition that he received it at termination of the lease.
- Make prompt and regular payment of rent and other charges payable in terms of the lease and not offset the deposit against his rent.

- Make payment of a deposit – the amount of which should be agreed upfront between the landlord and tenant.
- Arrange a joint exit inspection at a mutually convenient time, with the view to determining what damage was caused during the tenant's occupation.
- Have a joint incoming and outgoing inspection with the proprietor.
- Pay any utilities use on the date they fall due.
- Not request the proprietor to use the deposit for rent during the cancellation period.

The tenant has the right to:

- Lodge a claim at the Rental Housing Tribunal.
- The tenant has the right to privacy. The property owner may only inspect the premises after reasonable notice to the tenant.
- After the outgoing inspection has been performed and it is determined there are no damages, the deposit must be refunded to the tenant within seven days. However, the deposit may be applied to any amount the tenant owes, including utilities.
- Receive a receipt for all monies paid to the proprietor.
- The tenant has a right to a rental invoice which breaks down the different costs: basic rent, electricity, water etc.
- Inspect the landlord's municipal account to ascertain the charges passed onto him.
- Cancel the lease prior to the end of the fixed period. The tenant has the right to cancel a lease early by giving the proprietor 20 (twenty) business days' notice. The tenant must also remember he will be liable for a reasonable cancellation penalty.
- A tenant has the right to accurate information being held on their credit profiles with the credit bureau.

Proprietor

The proprietor is obliged to:

- Provide the tenant with a written lease agreement.
- Ensure that the property is structurally sound and provides for all basic services.
- Not to search tenant's person, property or home or seize the tenant's possessions, except in terms of law via court order.
- Not to infringe the privacy of the tenant's communications.
- Not to discriminate against a tenant or prospective tenant (or members of the household) based on race, gender, sex, pregnancy, marital status, sexual orientation, ethnic or social origin, colour, age, disability, religion, conscience, belief, culture, language, or birth.
- Invest the deposit paid by the tenant in an interest-bearing account.
- Refund the deposit received plus interest to the tenant after the expiry of the contract.
- Not use the deposit to upgrade the property when the tenant vacates.

- It is the landlord's responsibility to place and maintain the property fit for the purpose for which it was let. The tenant is responsible for maintaining the property in the good condition it was given to him – fair wear and tear excepted.
- The proprietor may not increase the rent during the fixed term period.

The proprietor has the right to:

- Prompt and regular payment of rental and other payments.
- Recover unpaid rental or any other amount that is due and payable after obtaining a ruling from the Tribunal or by court order.
- Terminate the lease on grounds that do not constitute an unfair practice.
- Repossess the property after first obtaining a Court Order.
- Claim compensation for damage to the property if caused by the tenant or his/her visitor.
- Use the deposit plus interest towards the payment of all amounts for which the tenant is liable under the lease.
- The proprietor is entitled to pass on the increase in his levies or rates and taxes as monthly charges, only if the lease specifically makes provision for this.

Employee Related Acts

3.20 Employment Equity Act (EEA) – No 55 of 1998

Introduction

The purpose of the Act is to achieve equity in the workplace, by:

- Promoting equal opportunity and fair treatment in employment through the elimination of unfair discrimination.
- Implementing affirmative action measures to redress the disadvantages in employment experienced by designated groups (Black people, women, or people with disabilities) to ensure their equitable representation in all occupational categories and levels in the workforce.
- The Act applies to all employees and employers, except to the South African National Defense Force, National Intelligence Agency, and South African Secret Services.

Specifics

Discrimination

The *Employment Equity Act* promotes equity in the workplace, ensures that all employees receive equal opportunities and that employees are treated fairly by their employers. The law protects employees from unfair treatment and any form of discrimination. The law prohibits discrimination, directly or indirectly on grounds of race, gender, pregnancy, marital status, ethnic or social origin, color, sexual orientation, age, religion, HIV status, belief, political opinion, culture, language, and birth. The law aims to redress injustices of the past by implementing affirmative action measures. According to the legislation, it is fair discrimination to promote affirmative action consistent with the Act.

Medical Testing

The Act protects employees from unfair medical testing and evaluation. It states:

- Medical testing of an employee is permissible only when legislation requires testing or when this is justifiable for distinct reasons.
- HIV testing is prohibited unless such testing is determined to be justifiable by the Labor Court.

Psychological testing and similar assessments are prohibited, unless the test is scientifically valid and dependable, can be applied fairly to all employees, and is not biased against any employee or group.

Application of the Act

The Act applies to:

- All employers and employees.
- Designated employers. A designated employer means an employer who employs 50 or more employees **or** has a total annual turnover as reflected in Schedule 4 of the Act. In our type of business, the threshold is R10m.
- A designated group means black people, women, or people with disabilities.

Responsibility of the Employer

Every designated employer must, to achieve employment equity, implement affirmative action measures for people of designated groups. A designated employer must prepare and implement a plan to achieve employment equity, which must:

- Have objectives for each year of the plan.
- Include affirmative action measures.
- Have numerical goals for achieving equitable representation.
- Have a timetable for each year.
- Have internal monitoring and evaluation procedures, including internal dispute resolution mechanisms.
- Identify persons, including senior managers, to monitor and implement the plan.

Consulting with the workforce on the above matters is also compulsory. Informing employees of the Act and the plans submitted to the Department must be done. Managers to implement and monitor the plans are required. Submitting of reports on the progress made is compulsory and must be done yearly.

Rights of Employees

An employee, or applicant for employment, may refer a dispute concerning alleged unfair discrimination (or medical or psychological testing) to the CCMA for conciliation. If a dispute is not resolved at conciliation, a party may refer it to the Labor Court for adjudication. The parties to a dispute may also agree to refer the dispute to arbitration. Unfair dismissal disputes in which unfair discrimination is alleged must be dealt with in terms of the *Labor Relations Act*.

Inspections

Labor inspectors from the Department of Labor have the right to inspect the employer for compliance with the Act and may issue a compliance order if this is not the case. Penalties for non-compliance may be issued.

Codes of Good Practice

These codes are issued by the Department from time to time to help employers to better implement the Act and to specifically address grey areas in the Act.

3.21 Broad-based Black Economic Empowerment Act (BBBEEA) – No 53 of 2003

Introduction

The objectives of this Act are to facilitate broad-based black economic empowerment by promoting economic transformation in order to enable meaningful participation of black people in the economy, achieving a substantial change in the racial composition of ownership and management structures and in the skilled occupations, increasing the extent to which

communities, workers, co-operatives own and manage existing and new enterprises, increasing the extent to which black women own and manage existing and new enterprises, promoting investment programmes that lead meaningful participation in the economy by black people, and promoting access to finance for black start-up enterprises.

Specifics

Black Economic Empowerment Advisory Council and Commission

A *Black Economic Empowerment Advisory Council* and a *Commission* are established to perform the tasks as set out in the Act, the issuing of good practices codes, set required reporting, monitor implementation, and do investigations, etc.

Codes and Measurement under the Codes

Codes about compliance and qualifying thresholds for measuring entities against these codes are set. Measurement and compliance apply to all state enterprises, those dealing with state enterprises, those dealing with the and those sectors having been issued a sectoral code.

BBBEE Elements

The following compliance measurements are used in the code and to establish a BBBEE score: ownership, management control, skills development, enterprise and supplier development and social-economic development. The Act sets out in detail the weightings of each measurement, the points scored and the BBBEE status/level contributor because of this.

General

Any governing body must ascertain if the Act applies to them and if so, to what degree they must comply. Governing bodies with a turnover of less than R10m (ten million) will automatically qualify for a level 4 contributor status. Black-owned governing bodies can increase their contributor level to 2 from 1. Governing bodies with a turnover of more than R10m (ten million) but less than R50m (fifty million) must unfortunately comply with the measurement criteria as explained above. Black-owned governing bodies can increase their contributor level to 2 from 1.

To comply with the *BBBEE Act* governing bodies must use a Verification Agency.

3.22 Unemployment Insurance Act (UIA) – No 63 of 2001

Introduction

The purpose of this Act is to establish the Unemployment Insurance Fund (UIF) which employers and employees contribute to and from which employees who become unemployed are entitled to benefits. It is meant to alleviate the harmful economic and social effects of unemployment.

Application of the Act

This Act applies to all employers and employees, other than:

- Employees employed for less than 24 hours a month.
- Employees who receive remuneration in terms of the Skills Development Act.
- Employers and employees in the national and provincial spheres of government.
- Persons who enter the Republic for the purpose of carrying out a contract of service, apprenticeship or learnership within South Africa.

The UIF Fund

The Unemployment Insurance Fund is established to raise funds by:

- The contributions made by employers and employees and collected by SARS.
- Money appropriated by Parliament.
- Any penalties and fines imposed in terms of this Act.
- Any interest or return on investment made by the Fund.
- Any other money to which the Fund may become entitled.

The Fund is used for:

- Payment of benefits in terms of this Act.
- Reimbursement of excess contributions to employers.
- Payment of remuneration and allowances to members of the UIF controlling body.

Right to Benefits

Subject to the provisions of this Act, a contributor or a dependent is entitled to the following benefits:

- Unemployment benefits
- Illness benefits
- Maternity benefits
- Adoption benefits

- Dependant's benefits

A scale of benefits to which a contributor is entitled exists and applies to claims made against the Fund. The calculation of benefits as above, to be claimed, is set out in the Act. Benefits payable to contributors and dependants in terms of this Act are not subject to income tax.

Enforcement

A labor inspector, who has reasonable grounds to believe that an employer has not complied with any provision of this Act or has committed an offence in terms of this Act, must obtain an undertaking by the employer to comply. The labor inspector will issue a compliance order if the labor inspector has grounds to believe that an employer has not complied. The Director General may apply to the Labour Court for a compliance order to be made an order of the Labour Court if the employer has not complied with the order.

Other Areas covered by the Act

The Act further provides for the following:

- The establishment of a controlling body for the fund.
- The use of the Labour Court to enforce compliance.
- Creation and maintenance of a data base of all contributors and claimants.
- Appointment of a commissioner and claims officer.

3.23 Occupational Health and Safety Act (OHSA) – No 85 of 1993

Introduction

The purpose of the Act is to provide for the health and safety of persons at work and for the health and safety of persons in connection with the use of plant and machinery, the protection of persons other than persons at work against hazards to health and safety arising out of or in connection with the activities of persons at work, to establish an advisory council for occupational health and safety, and to provide for matters connected therewith.

Specifics

Health and Safety Policy

The chief inspector may direct any category of employers by notice in the *Gazette*, to prepare a written policy concerning the protection of the health and safety of his employees at work, including a description of his facility and the arrangements for conducting and reviewing that

policy. An employer shall prominently display a copy of the policy referred to and signed by the chief executive officer, in the workplace where his employees normally report for service.

General Duties of Employers to their Employees

Every employer shall provide and maintain, as far as is reasonably practicable, a working environment that is safe and without risk to the health of his employees.

The matters to which those duties refer include in particular:

- Maintain systems of work that are safe and without risks to health.
- Take steps to eliminate or to mitigate any hazards or potential hazards.
- Decide for ensuring the safety and absence of risks to health in connection with the production, processing, use, handling, storage or transport of articles or substances.
- Establishing what hazards to the health or safety of persons are attached to any work which is performed, any article or substance which is produced, processed, used, handled, stored, or transported and he shall further establish what precautionary measures should be taken with respect to such work.
- Provide such information, instructions, training, and supervision as may be necessary to ensure the health and safety at work of his employees.
- Not permit any employee to do any work or to produce, process, use, handle, store or transport any article or substance or to operate any plant or machinery, unless the precautionary measures contemplated in the bullet points above have been taken.
- Take all necessary measures to ensure that the requirements of this Act are complied with by every person in his employment or on premises under his control.
- Enforce such measures as may be necessary in the interest of health and safety in general.
- Ensure that work is performed, and that plant or machinery is used under the general supervision of a person trained to understand the hazards associated with it and who have the authority to ensure that precautionary measures taken by the employer are implemented.
- Inform all employees regarding the scope of their authority.

General Duties of Employers and Self-employed Persons to Persons other than their Employees

Every employer shall conduct his undertaking in such a manner as to:

- Ensure that persons other than those in his employment who may be directly affected by his activities are not thereby exposed to hazards to their health or safety.

- Conduct his undertaking in such a manner as to ensure that he and other persons who may be directly affected by his activities are not thereby exposed to hazards to their health or safety.

General Duties of Manufacturers and Others regarding Articles and Substances used at Work

This clause applies to manufacturers that design, manufacture, erect, import, sell or supply any products and not to our retirement industry. The Minister may list certain activities which will then be subjected to specially developed rules and regulations to ensure the health and safety of people.

Duty to Inform

Every employer shall:

- Ensure every employee is made conversant with the hazards to his health and safety attached to any work which he must perform as well as with the precautionary measures which should be taken and observed with respect to those hazards.
- Inform the health and safety representatives concerned beforehand of inspections, investigations, or formal inquiries.
- Inform a health and safety representative as soon as reasonably practicable of the occurrence of an incident in the workplace or section of the workplace for which such representative has been designated.

General Duties of Employees at Work

Every employee shall:

- Take reasonable care for the health and safety of him and of other persons who may be affected by his acts or omissions.
- Co-operate with the employer to enable that duties or requirement to be performed are complied with.
- Carry out any lawful order given to him and obey the health and safety rules and procedure laid down by his employer or by anyone authorized thereto by his employer, in the interest of health or safety.
- Report if unsafe or unhealthy incident comes to his attention.
- If he is involved in any incident which may affect his health or which has caused an injury to himself, report such incident to his employer.

Not to interfere with or misuse anything

No person shall intentionally or recklessly interfere with or misuse anything which is provided in the interest of health or safety.

Chief Executive Officer charged with Certain Duties

Every chief executive officer shall:

- As far as is reasonably practicable ensure that the duties of his employer as contemplated in this Act are properly discharged.
- Assign any duty contemplated in the Act to any person under his control, which person shall act subject to the control and directions of the chief executive officer.

The delegation of duties shall not relieve an employer of any responsibility or liability under this Act.

Health and Safety Representatives

Every employer who has more than 20 (twenty) employees in his employment at any workplace shall:

- Designate in writing, for a specified period, health, and safety representatives for such workplace, or for different sections thereof.
- Consult in good faith regarding the arrangements and procedures for the nomination or election, period of office and subsequent designation of health and safety representatives.

The number of health and safety representatives for a workplace shall in the case of shops and offices be at least one health and safety representative for every 100 employees or part thereof. If an inspector is of the opinion that the number of health and safety representatives is inadequate, he may by notice in writing direct the employer to designate such number of employees as the inspector may determine. All activities in connection with the designation, functions and training of health and safety representatives shall be performed during ordinary working hours.

Functions of Health and Safety Representatives

A health and safety representative may perform the following functions in respect of the workplace:

- Review the effectiveness of health and safety measures.
- Identify potential hazards and potential major incidents at the workplace.

- Examine the causes of incidents.
- Investigate complaints by any employee relating to the employee's health or safety at work.
- Make representations to the employer or a health and safety committee on matters arising from the above.
- Make representations to the employer on general matters affecting the health or safety of the employees at the workplace.
- Inspect the workplace, including any article, substance, plant, machinery or health and safety equipment at that workplace at such intervals as may be agreed upon.
- Participate in consultations with inspectors at the workplace and accompany inspectors on inspections of the workplace.
- Receive information from inspectors.
- Attend meetings of the health and safety committee.

Health and Safety Committees

An employer shall in respect of each workplace where two or more health and safety representatives have been designated, establish one or more health and safety committees, and consult with the committee with a view to initiating, developing, promoting, maintaining, and reviewing measures to ensure the health and safety of his employees at work.

The following rules also apply:

- A health and safety committee shall consist of such number of members as the employer may from time to time determine.
- A health and safety committee shall hold meetings as often as may be necessary, but at least once every three months.
- The procedure at meetings of a health and safety committee shall be determined by the committee.
- A health and safety committee may co-opt one or more persons by reason of his or their knowledge of health or safety matters as an advisory member.
- If an inspector is of the opinion that the number of health and safety committees established for any workplace is inadequate, he may in direct the employer to establish for such workplace such number of health and safety committees.

Functions of Health and Safety Committees

A health and safety committee:

- May make recommendations to the employer or, where the recommendations fail to resolve the matter, to an inspector regarding any matter affecting the health or safety of persons at the workplace.
- Shall discuss any incident at the workplace or section thereof in which or in consequence of which any person was injured, became ill or died, and may in writing report on the incident to an inspector.
- Shall perform such other functions as may be prescribed.
- Shall keep record of each recommendation made to an employer.
- Shall not incur any civil liability by reason of the fact only that it or he failed to do anything which it or he may be or is required to do in terms of this Act.
- An employer shall take the prescribed steps to ensure that a health and safety committee complies with the Act.

Certain Instructions and Deductions Prohibited

No employer shall, in respect of anything which he is (in terms of this Act) required to provide or to do in the interest of the health or safety of an employee, make any deduction from any employee's remuneration.

Report to Inspector regarding Certain Incidents

Each incident occurring at work or arising out of or in connection with the activities of persons at work shall, within the prescribed period and in the prescribed manner, be reported to an inspector by the employer.

In the event of an incident in which a person died, or was injured to such an extent that he is likely to die, or suffered the loss of a limb or part of a limb, shall without the consent of an inspector disturb the site at which the incident occurred or remove any article or substance involved in the incident therefrom, provided that such action may be taken as is necessary to prevent a further incident, to remove the injured or dead, or to rescue persons from danger.

Report to Chief Inspector regarding Occupational Disease

Any medical practitioner who examines or treats a person for a disease described in the Second Schedule to the *Workmen's Compensation Act* or any other disease which he believes arose out of that person's employment shall within the prescribed period and in the prescribed manner report the case to the person's employer and to the chief inspector.

Victimization Forbidden

No employer shall dismiss an employee, or reduce the rate of his remuneration, or alter the terms or conditions because he suspects or believes that that employee has given information to the Minister or any person charged with the administration of a provision of this Act, or has given evidence before a court of law or has done anything which he may or is required to do in terms of this Act or has refused to do anything which he is prohibited from doing in terms of this Act.

Investigations

An inspector may investigate the circumstances of any incident which has occurred at or originated from a workplace, and which has resulted in the injury, illness, or death of any person, to determine whether it is necessary to hold a formal investigation. After completing the investigation, the inspector shall submit a written report thereon to the attorney general within whose area of jurisdiction such incident occurred. On receipt of a report the Attorney General shall deal therewith in accordance with the provisions of the *Inquests Act*.

Obstruction of Investigation or Inquiry or Failure to render Assistance

No person shall, in relation to any investigation or inquiry held:

- Fail to comply with any lawful direction, subpoena, request, or order issued by the inspector.
- Refuse or fail to answer to the best of his knowledge any question lawfully put to him.
- In any manner whatsoever advise, encourage, incite, order, or persuade any person who has been directed, subpoenaed, requested, or ordered to do something by the inspector, not to comply with the requests.
- Refuse or fail, when required thereto by the inspector, to furnish him with the means or to render him the necessary assistance.
- Refuse or fail to attend an inquiry.
- Intentionally insult the inspector or intentionally interrupt the proceedings.

Offences and Penalties

Any person who contravenes or fails to comply with a provision of the Act shall be guilty of an offence and on conviction be liable to a fine or to imprisonment.

3.24 Labour Relations Act (LRA) - No 66 of 1995

Introduction

The purpose of this Act is to advance economic development, social justice, labour peace and the

democratization of the workplace by fulfilling the primary objects of this Act, which are to:

- Give effect to and regulate the fundamental rights conferred by the Constitution.
- Give effect to obligations incurred by the Republic as a member state of the International Labour Organization.
- Provide a framework within which employees and their trade unions, employers and employers' governing bodies can collectively bargain to determine wages, terms and conditions of employment and other matters of mutual interest.

Freedom of Association

Every employee has the right to participate in forming a trade union or federation of trade unions and to join a trade union, subject to its constitution. Every employer has the right to participate in forming an employers' governing body or a federation of employers' governing bodies and to be a member of an employers' governing body, subject to its constitution.

Protection of Employees and Persons seeking Employment

No person may discriminate against an employee for exercising any right conferred by this Act. No person may do, or threaten to do, any of the following:

- Require an employee or a person seeking employment not to be a member of a trade union, not to become a member of a trade union, to give up membership of a trade union or workplace forum.
- Prevent an employee or a person seeking employment from exercising any right conferred by this Act or from participating in any proceedings in terms of this Act.

Collective Bargaining

The following rights are given to a union or their representatives:

- **Have access to the employers' premises** to recruit members and communicate with members, hold meetings with employees, to vote at the employer's premises. The rights conferred as to time and place must be reasonable and necessary to safeguard life or property or prevent the disruption of work.
- Any employee who is a member of a representative trade union may authorize the employer to **deduct contributions payable** to that trade union from the employee's wages.
- Members are entitled to **elect representatives** to assist and represent the employee in grievance and disciplinary proceedings, to monitor the employer's compliance with the workplace-related provisions of this Act and conditions of employment and any collective agreement that is binding on the employer, report any alleged contravention of the workplace-related provisions, perform any other function agreed to between the

representative trade union, and take reasonable time off with pay during working hours to perform the functions of a trade union representative.

- An employee who is an office-bearer of a representative trade union is entitled to take reasonable **leave** during working **hours for the purpose of performing the functions** of that office.
- Ask the employer to **disclose all relevant information** that will allow the trade union representative to effectively perform their functions. The Act provides for certain information that is restricted.
- May conclude a **collective agreement** by establishing a threshold of representativeness required in respect of one or more of the unions.

A representative trade union and an employer may conclude a collective agreement, to be known as an **agency shop agreement**, requiring the employer to deduct an agreed agency fee from the wages of employees identified in the agreement who are not members of the trade union but are eligible for membership thereof.

A representative trade union and an employer may conclude a collective agreement, to be known as a **closed shop agreement**, requiring all employees covered by the agreement to be members of the trade union.

One or more registered trade unions and one or more registered employers' governing bodies may establish a **bargaining council** for a sector and area to conclude collective agreements, to enforce those collective agreements, to prevent and resolve labour disputes, to perform the dispute resolution functions, to establish and administer a fund to be used for resolving disputes, and to establish and administer pension, provident, medical aid, sick pay, holiday, unemployment, and training schemes.

Strikes and Lockouts

Every employee has the right to strike, and every employer has recourse to lockout if:

- The issue in dispute has been referred to a council or to the Commission as required by this Act.
- In the case of a proposed strike, at least 48 hours' notice of the commencement of the strike and in the case of a proposed lockout, at least 48 hours' notice of the commencement of has been given.

No person may take part in a strike or a lockout or in any conduct in contemplation or furtherance of a strike or a lockout if:

- That person is bound by a collective agreement that prohibits a strike or lockout.

- That person is bound by an agreement that requires the issue in dispute to be referred to arbitration.
- The issue in dispute is one that a party has the right to refer to arbitration or to the Labour Court.
- That person is engaged in an essential service.

A strike that complies with the provisions of the Act is a protected strike. A protected lockout means a lockout that complies as well. In the case of any strike or lockout, which does not comply with the provisions of the Act, the Labor Court has exclusive authority to grant an interdict or order to restrain any person from participating in a strike or any person from participating in a lockout. It can also order the payment of just and equitable compensation for any loss attributable to the strike or lockout. A registered trade union may authorize a picket by its members and supporters for the purposes of peacefully demonstrating in support of any protected strike or in opposition to any lockout. A picket may be held in any place to which the public has access but outside the premises of an employer or, with the permission of the employer, inside the employer's premises.

Workplace Forums

A workplace forum seeks to promote the interests of all employees in the workplace, whether they are trade union members, to enhance efficiency in the workplace, promote consultation between employees and employers with a view to reaching consensus about the matters, and participate in joint decision-making about the certain defined matters. The workplace forum is for facilities with more than 100 staff members.

Trade Union and Employers' Organizations

This chapter of the Act regulates the establishment and controls over Trade Unions, Trade Federations, and employers' organizations. This is detailing that member of the ASC do not need to operate effectively.

Dispute Resolution

The Commission for Conciliation, Mediation and Arbitration is established to resolve, through conciliation and arbitration, any dispute referred to it in terms of this Act. This is a free service, and any employee or employer may refer its labour-related disputes to the Commission. Commissioners reside over such referred cases.

The Labour Court judges have exclusive authority in respect of matters that elsewhere in terms of this Act or in terms of any other law are to be determined by the Labour Court. The Court may

make any appropriate order, including the granting of urgent interim relief, an interdict, an award of compensation in any circumstances contemplated in this Act, an award of damages in any circumstances contemplated in this Act, an order for costs, order compliance with any provision of this Act, etc.

Unfair Dismissal and Unfair Labour Practice

Every employee has the right not to be unfairly dismissed or subjected to unfair labour practice. Unfair dismissals and unfair labour practices are defined in the Act. The director may refer matters to the dispute to the Labour Court.

When an employer contemplates dismissing one or more employees for reasons based on the employer's operational requirements, the employer must consult any person whom the employer is required to consult in terms of a collective agreement or the trade union or the workplace forum or the employees themselves. The employer and the other consulting parties must, in the consultation process, attempt to reach consensus on avoiding the dismissal, minimize the number of dismissals, change the timing of the dismissals and/or mitigate the adverse effects of the dismissals.

Other Provisions

The Act further makes provision for other labour related matters and defines what can be done and what not in these circumstances, namely:

- Part-time employees
- Contractors
- Persons are employees until proven otherwise
- Confidentiality of information
- Issuing of codes of good practices
- Record keeping

3.25 Basic Condition of Employment Act (BCEA) – No 75 of 1997

Introduction

The objective of the Act is to give effect to the right to fair labour practices of the Constitution by establishing and making provision for the regulation of basic conditions of employment, and thereby to comply with the obligations of the Republic as a member state of the International Labour Organization and to provide for matters connected therewith. The purpose of this Act is to advance economic development and social justice.

Specifics

Working hours

Every employer must regulate the working time of each employee in accordance with the provisions of any Act controlling occupational health and safety, with due regard to the health and safety of employees, the *Code of Good Practice on the Regulation of Working Time* issued and the family responsibilities of employees.

An employer may not require or permit an employee to work more than 45 hours in any week, nine hours in any day if the employee works for five days or fewer in a week or eight hours in any day if the employee works on more than five days in a week. An employer may not require or permit an employee to work overtime except in accordance with an agreement and more than ten hours a week. He/she may not work more than twelve hours on any day. An employer must pay an employee at least 1.5 times the employee's wage for overtime worked. The latter may be in the form of days or hours off. An agreement in writing may require or permit an employee to work up to twelve hours a day, inclusive of the meal intervals required without receiving overtime pay. An employee may not work more than 45 ordinary hours of work in any week, more than ten hours overtime in any week, or more than five days in any week.

An employer must give an employee who works continuously for more than five hours a meal interval of at least one continuous hour. An employer must allow an employee a daily rest period of at least twelve consecutive hours between ending and recommencing work and a weekly rest period of at least 36 consecutive hours.

Pay for Work on Sundays, Night Work and Public Holidays

An employer must pay an employee who works on a Sunday at two times the employee's wage for each hour worked, unless the employee ordinarily works on a Sunday, in which case the employer must pay the employee at 1.5 times the employee's wage.

An employer may only require or permit an employee to perform night work, if so agreed, and if the employee is compensated by the payment of an allowance and transportation is available between the employee's places of residence.

An employer may not require an employee to work on a public holiday except in accordance with an agreement. If a public holiday falls on a day on which an employee would ordinarily work an employer must pay the employee who does not work on the public holiday at least the wage that

the employee would ordinarily have received for work on that day. An employee who does work on a public holiday must be paid at least twice the normal wage.

Leave, Sick and other forms of Leave

An employer must grant an employee at least 21 consecutive days' annual leave on full remuneration in respect of each annual leave cycle by agreement, one day of annual leave on full remuneration for every seventeen days on which the employee worked or was entitled to be paid or by agreement, one hour of annual leave on full remuneration for every seventeen hours worked. An employer must pay an employee leave pay at least equivalent to the remuneration that the employee would have received for working for a period equal to the period of annual leave.

During every sick leave cycle 36 months, an employee is entitled to an amount of paid sick leave equal to the number of days the employee would normally work during a period of six weeks. An employer is not required to pay an employee if the employee has been absent from work for more than two consecutive days or on more than two occasions during an eight-week period and, on request by the employer, does not produce a medical certificate. An inability to work caused by an accident or occupational disease as defined in the *Compensation for Occupational Injuries and Diseases Act* is not applicable to the foresaid rules.

An employee is entitled to at least four consecutive months' maternity leave. An employee may commence maternity leave at any time from four weeks before the expected date of birth, or a date from which a medical practitioner certifies that it is necessary. No employee may work for six weeks after the birth of her child, unless a medical practitioner certifies that she is fit to do so.

An employer must grant an employee, during each annual leave cycle, at the request of the employee, 3 (three) days' paid leave which the employee is entitled to take when the employee's child is born, when the employee's child is sick, in the event of the death of the employee's spouse or life partner, or the employee's parent, adoptive parent, grandparent, child, adopted child, grandchild or sibling.

All the above does not apply to an employee who works less than 24 hours a month for an employer.

Employment Agreements

An employer must supply an employee, when the employee commences employment, with an agreement with the minimum information as defined by the Act.

Informing Employees of their Rights

An employer must display at the workplace where it can be read by employees a statement in the prescribed form of the employee's rights under this Act in the official languages which are spoken in the workplace.

Other Matters covered by the Act

The payslip detail, how wages are to be calculated, the treatment of deductions, paying those deductions over to the appropriate authorities, and how and when payments must be made are covered in the Act. Instead of giving an employee notice an employer may pay the employee the remuneration the employee is entitled to.

On termination of employment, an employer must pay an employee for any paid time off that the employee has not taken, and severance pay equal to at least one week's remuneration for each completed year of service. On termination of employment an employee is entitled to a certificate of service.

No person may employ a child who is under fifteen years of age or who is under the minimum school-leaving age in terms of any law. No person may employ a child to do any work that is inappropriate for a person of that age or that places at risk the child's well-being, education, physical or mental health, or spiritual, moral, or social development.

Sectoral Determination

The Minister may make a sectoral determination establishing basic conditions of employment for employees in a sector and area.

Employment Conditions Commission

The Employment Conditions Commission is established to decide on sectoral determinations, any matter concerning basic conditions of employment, any matter arising out of the application of this Act, and the effect of the policies of the government on employment.

Labour Inspectors

The Minister may appoint any person in the public service as a labour inspector. A labour inspector appointed may promote, monitor, and enforce compliance by advising employees and employers of their rights and obligations, conducting inspections, investigating complaints, endeavouring to secure compliance, and performing any other prescribed function.

Rights of Employees

Every employee has the right to make a complaint to a trade union representative, a trade union official or a labour inspector concerning any alleged failure or refusal by an employer to comply with this Act, discuss his/her conditions of employment with his/her fellow employees, his/her employer or any other person, refuse to comply with an instruction that is contrary to this Act, refuse to agree to any term or condition of employment that is contrary to this Act, and to inspect any record kept in terms of this Act that relates to the employment of that employee.

Procedure for Disputes

If there is a dispute about the interpretation or application of the Act the dispute may be referred to a council if the parties to the dispute fall within the scope of that council or the CCMA.

Temporary Employment Services

A person whose services have been procured for or provided to a client by a temporary employment service is the employee of that temporary employment service, and the temporary employment service is that person's employer. A person who is an independent contractor is not an employee of a temporary employment service, nor is the temporary employment service the employer of that person.

Presumption as to who is an Employee

A person who works for, or renders services to, any other person is presumed, until the contrary is proved, to be an employee, regardless of the form of the contract.

Codes of Good Practice

The Minister, after consulting NEDLAC issues a Code of Good Practice on the arrangement of working time, protection of employees during pregnancy and after the birth of a child, other

codes of good practice and may change or replace any code of good practice.

Representation of Employees or Employers

A registered trade union or registered employers' governing body may act in any one or more of the following capacities in any dispute to which any of its members is a party: in its own interest, on behalf of any of its members, or in the interest of any of its members.

Penalties

Any magistrates' court has jurisdiction to impose a penalty for an offence provided for in this Act. Any person convicted of an offence may be sentenced to a fine or to imprisonment.

3.26 Skills Development Act (SDA) – No 97 of 1998

Introduction

The *Skills Development Act* aims to expand the knowledge and competencies of the SA labour force to improve productivity and employment. The main aims are to:

- Improve the quality of life of workers, their prospects of work.
- Improve productivity in the workplace.
- Increase the levels of investment in education and training.
- Promote self-employment.

Specifics

The National Skills Authority (NSA), the National Skills Fund (NSF), the Sector Education and Training Authorities (SETAs) have been established.

The functions of the NSA are to advise the Minister of Labour on a national skills development policy and strategy, and on guidelines to implement the strategy. These strategies are then integrated with the *National Qualification Framework*. It also advises the Minister on the allocation of subsidies from the NSF. It reports to the Minister on the progress made in the implementation of the strategy.

Sectional Education and Training Authorities (SETAs)

SETAs are established for any major national economic sector. The SETAs are financed from the levies collected from its sector and monies paid to it by the National Skills Fund (NSF).

Their main functions are to:

- Develop and implement a sector skills plan, within the national skills development strategy, by establishing sector workplace skills plans.
- Promote learnerships by identifying workplaces for practical work experiences.
- Monitor the quality of education and training in their sectors. They liaise with *Employment Services*, the NSA, and the provinces.
- Report to the Director General of the Department of Labour on the implementation of its sector skills plans and its income and expenditure.
- Establish learnerships that have a structured learning programme and a practical work experience of a specified nature and duration. The learnership must lead to a qualification that is recognised by the *South African Qualifications Authority*.

Skills Development Planning

The skills development planning unit in the Department of Labour performs the following duties:

- Research and analyse the labour market to determine skills development needs for South Africa as a whole, each sector of the economy and organs of state.
- Assist in the formulation of the national skills development strategy and sector skills development plans.
- Provide information on skills-related matters to the Minister, NSA, SETA, education and training providers, and organs of state.

Labour Centers

Labour Centres in the Department of labour are set up to provide employment services for workers, employers, training providers and rural communities.

National Skills Fund

The National Skills Fund (NSF) funds projects that have been identified in the national skills development strategy and other projects the Director-General sees as necessary to the achievement of the purposes of the Act.

3.27 Skills Development Levies Act (SDLA) – No 9 of 1999

Introduction

The *Skills Development Levies Act* regulates a compulsory levy scheme to fund education and training in businesses within various sectors in South Africa. It aims to expand the knowledge and competencies of the labour force and in so doing increase the supply of skilled labour in South

Africa, providing for greater productivity and employability. The levy grant scheme, legislated through the *Skills Development Levies Act*, serves to fund the skills development initiative in the country. The intention is to encourage a planned and structured approach to learning, and to increase employment prospects for work seekers. Participating fully in the scheme will allow you to benefit from incentives and to reap the benefits of a better skilled and more productive workforce.

Allocation of Funds

SARS collects all *Skills Development Levies* of which 20% goes to the *National Skills Fund* and 80% to the SETAs. SETAs retain 10.5% for their administration, 0.5% goes to the *Quality Council for Trades and Occupation (QCTO)* for quality assurance, 20% is dispersed back to compliant and participating employers (Mandatory Grant) and 49% goes to their pivotal pool of funds. 80% of this pool is available to employers in the form of a grant (subject to application and success submission of a plan) and 20% is reserved for discretionary funding of compliant employers. SETAs may also apply for additional funding from the *National Skills Fund* for special projects. Should the SETA not use the funds at their disposal they are swept back to the *National Skills Fund (NSF)*.

Who must pay the Levy?

The levy is calculated as 1% of your wage bill, payable monthly. All employers who are registered with SARS for PAYE and have an annual payroll more than R500 000 must register with SARS to pay for the skills development levy.

Public Benefit Organizations (PBOs) are exempt from paying the levy but can still claim for training from the SETA. You must apply for such exemptions, which is the SDL 101 form, issued by SARS.

Levies are payable to the *South African Revenue Service*, which acts as a collecting agency for the applicable SETA. Each month SARS will provide all registered employers with a "Return for Remittance". The levy must be paid to SARS not later than seven days after the end of the month. SARS will impose both interest and penalties for late or non-payment of levies.

Refunds and Claims

By complying with certain legal and procedural requirements, employers may claim up to 60% of the skills development levy (SDL) back from their *Skills Education Training Authorities (SETA)*.

3.28 Compensation of Occupational Injuries and Diseases Act (COIDA) – No 130 of 1993

Introduction

To provide for compensation for disablement caused by occupational injuries or diseases sustained or contracted by employees in the course of their employment, or for death resulting from such injuries or diseases, and to provide for matters connected therewith.

Specifics

Appointments

The Minister appoints a Director General, Compensation Officer, compensation controlling body and assessors to ensure that all aspects of the Act are executed effectively.

Compensation Fund and Reserve Fund

The compensation fund shall consist of any moneys vested in the compensation fund, the assessments paid by employers in terms of this Act, any penalties and fines imposed in terms of this Act, any interest on investments, any amounts transferred from the reserve fund, and any other amounts to which the compensation fund may become entitled.

The compensation fund and its moneys shall be applied to the payment of compensation, the cost of medical aid or other pecuniary benefits to or on behalf of or in respect of employees in terms of this Act, the maintenance of the reserve fund, the payment of expenses incurred in or in connection with the performance of his function, and the transfer of any surplus in the compensation fund to the reserve fund. The reserve fund consists of cash or investments and is established to provide for unforeseen demands on the compensation fund and to stabilize the tariffs of assessment.

Right of Employee to Compensation

If an employee has an accident resulting in his disablement or death such employee or the dependants of such employee shall be entitled to the benefits provided for and prescribed in this Act.

If an accident is attributable to the serious and wilful misconduct of the employee, no compensation shall be paid unless the accident results in serious disablement, or the employee

dies in consequence thereof leaving a dependant wholly financially dependent upon him. An accident shall be deemed to have arisen out of and in the course of the employment of an employee notwithstanding that the employee was at the time of the accident acting contrary to any law applicable to his employment. A right to compensation may be refused under certain circumstances.

Notice of Accident by Employee to Employer

Written or verbal notice of an accident shall, as soon as possible after such accident happened, be given by or on behalf of the employee concerned to the commissioner in the prescribed manner.

Inquiry by Director General into Accident

The Director General shall, after having received notice of an accident or having learned that an employee has met with an accident, make such inquiry as he may deem necessary to enable him to decide upon any claim or liability.

Employee to submit to Medical Examination

An employee who claims compensation shall, when so required, submit himself to an examination by the medical practitioner designated. This is paid for by the Commissioner.

Compensation for Temporary Total, Partial Disablement or Permanent Disability

Compensation for temporary total disablement shall be calculated on the basis set out in item 1 – 5 of Schedule 4 subject to the minimum and maximum amounts. Payment of lump sum *in lieu* of pension may be decided on as well.

Compensation for Occupational Diseases

An employee shall be entitled to the compensation provided for and prescribed in this Act if it is proved that the employee has contracted a disease mentioned in Schedule 3 and that such disease has arisen out of and in the course of his/her employment or that the employee has contracted a disease other than a disease as defined but that such disease has arisen out of and in the course of his/her employment.

Appointment of Medical Advisory Panels

The Director General may on a regional basis appoint medical advisory panels which shall consist of as many members as he may deem necessary to assist him about the diagnosis of occupational diseases in individual cases, the inclusion of occupational diseases in Schedule 3, and general policy concerning the diagnosis of and disablement because of occupational diseases.

Medical Aid and Assistance

The employee is entitled to medical aid and assistance relating to the accident for not more than two years.

Obligations of Employers

An employer carrying on business shall register with the commissioner and shall furnish the commissioner with the prescribed particulars of his business and shall within a period furnish such additional particulars as the commissioner may require.

An employer shall keep a record of the earnings and other prescribed particulars of all employees and shall at all reasonable times produce such record on demand. An employer shall retain the record for a prescribed period.

An employer shall not later than the 31st (thirty-first) day of March in each year furnish the commissioner with a return in the prescribed form, certified by him as correct. Fines for not producing reports or not paying the correct amount of the self-assessment can be imposed. An employer who fails to comply with the provisions of this section shall be guilty of an offence.

Mandatory and Contractors

If a person (the mandatory) during or for the purposes of his business enters into an agreement with any other person (the contractor) for the execution by or under the supervision of the contractor any work undertaken, the contractor shall register as an employer in accordance with the provisions of this Act and pay the necessary assessments.

3.29 The Promotion of Equality and Prevention of Unfair Discrimination Act (No 4 of 2000)

Introduction

To provide for the composition, powers, functions and functioning of the Commission on Gender Equality; and to provide for matters connected therewith.

Specifics

Powers and functions of Commission:

- To achieve its object referred to in section 119(3) of the Constitution, the Commission shall monitor and evaluate policies and practices of organs of state, statutory bodies or functionaries, public bodies and authorities and private businesses, enterprises, and institutions, to promote gender equality and may make any recommendations.
- The Commission shall develop, conduct, or manage information programmes; and education programmes to foster public understanding of matters pertaining to the promotion of gender equality.
- May recommend to Parliament or any other legislature the adoption of new legislation which would promote gender equality and the status of women.
- Shall investigate any gender-related issues of its own accord or on receipt of a complaint, and shall endeavour to mediation, conciliation, or negotiation: Provided that the Commission may at any stage refer any matter to the Human Rights Commission. the Public Protector or any other authority.
- Shall monitor the compliance with international conventions, international covenants, and international charters, acceded to or ratified by the Republic.
- Shall prepare and submit reports to Parliament pertaining to any such convention, covenant or charter relating to the object of the Commission

Reporting of the Commission

The Commission may in the manner it deems fit, make known to any person any finding, point of view or recommendation in respect of a matter investigated by it. The Commission shall report to the President at least once every year on its activities and the achievement of its objectives, and the President shall cause such report to be tabled promptly in parliament:

Offences and Penalties

A person who, without just cause, refuses, or fails to comply with a notice under section 10(2),

contravenes section 10(2), *acts* contrary to the authority of a warrant issued or any other trespass shall be guilty of an offence and liable on conviction to a fine or to imprisonment

Care Services Related Acts

3.30 National Health Act (NHA) – No 61 of 2003

Introduction

The objectives of this Act are:

- To regulate national health and to provide uniformity in respect of health services across the nation through the national health system which encompasses public and private providers of health services.
- To provide in an equitable manner the setting out of the rights and duties of health care providers, health workers, health establishments and users.

With the Act and through the National, Provincial and District Health Councils and Consultative Health Forums, the Minister must.

- Protect, promote, improve, and maintain the health of the citizens.
- Promote the inclusion of health services in the socio-economic development plan.
- Determine the policies and measures necessary to protect, promote, improve, and maintain the health and well-being of the population.
- Ensure the provision of such essential health services, which include primary health care services, to the population.
- Equitably prioritize the health services that the State provides.

The national department, every provincial department and every municipality must establish such health services as are required in terms of this Act, and all health establishments and health care providers in the public sector must equitably provide health services within the limits of available resources.

Specifics

Health Establishments defined

It means the whole or part of a public or private institution, facility, building or place, whether for profit or not, that is operated or designed to provide inpatient or outpatient treatment, diagnostic or therapeutic interventions, nursing, rehabilitative, palliative, convalescent, and preventative or other health services.

Eligibility for Free Health Services in Public Health Establishments

The Minister prescribes conditions subject to which categories of persons are eligible for such free health services at public health establishments.

Emergency Treatment

A health care provider, health worker or health establishment may not refuse a person emergency medical treatment.

User to have Full Knowledge

Every health care provider must:

- Inform a user of his health status except in circumstances where there is substantial evidence that the disclosure of the user's health status would be contrary to the best interests of the user.
- The range of diagnostic procedures and treatment options available to the user.
- The benefits, risks and consequences associated with each option.
- Acknowledge the user's right to refuse health services and explain the implications, risks, and obligations of such refusal.

Consent of User and Participation in Decisions

A health service may not be provided to a user without the user's informed consent. A user has the right to participate in any decision affecting his/her personal health and treatment. If the informed consent required is given by a person other than the user, such person must, if possible, consult the user before giving the required consent. If a user is unable to participate in a decision affecting his/her personal health, he/she must be informed after the provision of the health service.

Obligation to keep Records and Confidentiality thereof

The person in charge of a health establishment must ensure that a health record containing such information as may be prescribed is created and maintained.

All information concerning a user, including information relating to his/her health status, treatment or stay in a health establishment, is confidential. A health worker that has access to the health records of a user may disclose personal information to any other person or health care provider as is necessary for any legitimate purpose within the ordinary course and scope of his/her duties. The person in charge of a user's health records must set up control measures to

prevent unauthorized access to those records and to the storage facility in which, or system by which, records are kept.

Laying of Complaints

Any person may lay a complaint about the way he/she was treated at a health establishment and have the complaint investigated.

Duties of Users

A user must adhere to the rules of the health establishment when receiving treatment, provide the health care provider with accurate information pertaining to his/her health status and cooperate with health service providers, treat health care providers and health workers with dignity and respect, and sign a discharge certificate or release of liability certificate if he/she refuses to accept recommended treatment.

Rights of Health Care Personnel

Health care personnel may not be unfairly discriminated against on account of their health status. Despite this the head of the health establishment may in accordance with any guidelines determined by the Minister impose conditions on the service to be rendered by a health care provider. Every health establishment must implement measures to minimize injury or damage to the person and property of health care personnel. A health care provider may refuse to treat a user who is physically or verbally abusive or who sexually harasses him or her.

Certificate of Need

A person may not establish, construct, modify or acquire a health establishment or health agency, increase the number of beds in, or acquire prescribed health technology at, a health establishment or health agency without being in possession of a certificate of need. All health establishments are categorized as may be appropriate by the Minister.

Health Services at Non-health Establishments

The Minister may prescribe minimum standards and requirements for the provision of health services in locations other than health establishments, including schools, elderly care facilities and other public places.

Obligations of Private Health Establishments

Every private health establishment must maintain insurance cover sufficient to indemnify a user for damage he/she might suffer because of a wrongful act by any member of its staff or by any of its employees.

All health establishments must comply with the quality requirements and standards prescribed by the Minister after consultation with the National Health Council.

Establishment of Inspectorate for Health Establishments

An inspectorate is established to monitor and evaluate compliance with this Act and submit a quarterly report on its activities and findings. This is performed through health inspectors performing routine inspections.

Other Subjects covered by the Act

Other subjects covered by the Act but not summarized are:

- Blood and blood products
- Cloning
- Transplants of tissue and organs
- Organ donations
- Post-mortems and experimentation
- The work of research and ethics committees

3.31 Medicines and Related Substances Act (MRSA) - No 101 of 1965

Introduction

The Act provides for the following:

- Registration of medicines and related substances intended for human and for animal use.
- The establishment of a Medicines Control Council.
- The control of medicines and scheduled substances and medical devices.
- Make further provision for the prohibition on the sale of medicines which are subject to registration and are not registered.
- Procedures that will expedite the registration of essential medicines, and for the re-evaluation of all medicines after five years.
- Measures for the supply of more affordable medicines in certain circumstances. Labels must be approved by the Council.
- Prohibit sampling and gifting of medicines.

- Provide for the licensing of persons to compound, dispense or manufacture medicines and medical devices, to provide for the generic substitution of medicines.
- Establishment of a pricing committee to regulate the purchase and sale of medicines by manufacturers, distributors, wholesalers, pharmacists.
- Make provisions for appeals against decisions of the Council.
- Acquire and appropriate funds.
- Regulate the Minister's power to make regulations.

Specifics

Medicines Control Council

The *Medicines Control Council* shall perform the functions conferred upon or assigned to the Council by this Act. The Council advises the Minister and reports to the Minister on any matter referred to the Council by the Minister for consideration and arising from the application of this Act.

Medicines Register

The Registrar keeps in the prescribed form the medicines register, in which shall be registered all medicines the Council has approved and the holders of the certificate of registration in respect of such medicines as are required by this Act.

Prohibition on the Sale of Medicines

No person shall sell any medicine which is subject to registration unless it is registered. The Council may from time to time determine that a medicine or class or category of medicines or part of any class or category of medicines be subject to registration.

Registration of Medicines

Every application for the registration of a medicine shall be submitted to the Registrar in the prescribed form and shall be accompanied by the prescribed particulars and samples of the relevant medicine and by the registration fee.

Labels and Advertisements

No person shall sell any medicine or scheduled substance unless the package in which that medicine or scheduled substance is sold bears a label stating the prescribed particulars and

approved by the Council. No person shall advertise any medicine or scheduled substance for sale unless such advertisement complies with the prescribed requirements of Council.

Bonusing, Sampling of Medicines

No person shall supply any medicine according to a bonus system, rebate system or any other incentive scheme. No person shall sample any medicine, meaning the free supply of medicines to clients.

Other Prohibitions

No person shall sell any medicine unless it complies with the prescribed requirements. No person shall publish or distribute or bring to the notice of the public any false or misleading advertisement concerning any medicine. No person shall sell, have in his/her possession, or manufacture any medicine or scheduled substance, except in accordance with the prescribed conditions.

Publication of Information

Council may, if it deems it expedient and in the public interest, disclose information in respect of the prescribing, dispensing, administration and use of a medicine, scheduled substance, or medical device.

Licensing

The Director General may on application in the prescribed manner and on payment of the fee issued to a medical practitioner, dentist, practitioner, nurse, or other person registered under the *Health Professions Act*, issue a licence to compound and dispense medicines, on the prescribed conditions.

Generic Substitution

A pharmacist or a person licensed shall inform all members of the public who visit the pharmacy or any other place where dispensing takes place of the benefits of the substitution for a branded medicine by an interchangeable multi-source medicine, and shall, in the case of a substitution, take reasonable steps to inform the person who prescribed the medicine.

Pricing Committee

The Minister appoints such persons as he/she may deem fit to be members of a committee to be known as the Pricing Committee to provide for the transparent pricing system for all medicines and scheduled substances, decide on an appropriate dispensing fee to be charged by a pharmacist, and decide on an appropriate fee to be charged by wholesalers or distributors or any other person selling medicines.

Inspectors

The Director General may authorize such persons as inspectors, as he may consider necessary for the proper enforcement of this Act.

Preservation of Secrecy

No person shall, except for the purpose of the exercise of his powers or the performance of his functions under this Act, disclose to any other person any information acquired by him in the exercise of his powers or the performance of his functions under this Act.

Regulations

The Minister may, in consultation with the Council, make regulations for all aspects that are covered under the Act.

Scheduled Medicines

Medicines are classified into nine schedules with each having their own rules and limitations when it comes to selling, advertising, and prescribing the medicines. The Act can be scrutinized for details per schedule.

Penalties

Any person who is convicted of an offence referred shall be liable to a fine or to imprisonment.

3.32 Pharmacy Act (PA) – No 53 of 1974

Introduction

The pharmacy controlling body (South African Pharmacy Council) is established with the objectives to:

- Assist in the promotion of the health.
- Control, promote and maintain adequate standards in respect of pharmaceutical education.
- Control the practice of the pharmacy profession and investigate complaints relating to the affairs of pharmacists.
- Advise the Minister on any matter relating to pharmacy.
- Register persons lawfully acting as pharmacists and charge them registration fees.
- Appoint examiners and moderators to conduct examinations, grant certificates, and charge such fees in respect of such examinations or certificates as may be prescribed.
- Approve conditions for the training of pharmacists.
- Appoint such officers as may be necessary and regulate their duties.
- Inspect the records, accounts, and activities at a registered pharmacy.
- Submit such information as may be deemed necessary.
- Suspend or cancel any registration entitling a person to continue the profession of a pharmacist.
- Consider any matter affecting the pharmacy profession and to make representations or take such action in connection therewith as the controlling body deems advisable.
- On the application of any person, consider and recognize any qualifications held by him (whether such qualifications have been obtained in the Republic of South Africa or elsewhere).
- Perform such other functions as may be prescribed and, to do all such things as the controlling body deems necessary.

Specifics

Registration of Pharmacists

No person shall be entitled to practice as a pharmacist within the Republic of South Africa unless he/she holds a registration. Every person desiring to be registered as a pharmacist shall apply to the controlling body and shall, unless he holds the controlling body's diploma in pharmacy, submit the degree, diploma, or certificate on which he relies as a qualification for registration.

A register is kept of all registered pharmacists, trainees, students, and unqualified assistance. A person may be removed from the register if he/she fails to comply with conditions as defined in the Act.

Pharmaceutical Education

No person or educational institution may offer a course of training in pharmacy unless such training has been approved by the con body. Various other rules apply to these institutions as well.

Conduct of Pharmaceutical Practice

Every pharmacy shall be conducted under the continuous personal supervision of a pharmacist whose name shall be displayed conspicuously over the main entrance of such a pharmacy.

Whenever it appears that any pharmacist has become mentally or physically disabled or has become unfit to purchase, acquire, keep, use, order, supply or possess any scheduled substance, or has been using a scheduled substance regularly for other than medicinal purposes, or has become addicted to the use of any scheduled substance, the controlling body shall cause the matter to be investigated.

No pharmacist shall pay to any medical practitioner any commission or in any other manner reward him in connection with a prescription which the medical practitioner has supplied.

No pharmacist shall make or attempt to make or to recover, or enter into any agreement, or associate himself in any way with any other person for the purpose of making or fixing excessive charges for any article supplied or to be supplied by him in his capacity as a pharmacist.

The act does allow the following persons to manage medicines

- The keeping of medicines or the supply of medicines to his own patients by any medical practitioner, dentist, or veterinary surgeon.
- The employment under the supervision of a pharmacist of a trainee pharmacist in the pharmacy in which he is undergoing his practical training.
- The manufacture or packing for human use of any medicine or medicinal or chemical substance by a person by virtue of a permit granted.
- The handling of medicines or the supply of medicines to members of the armed forces, under the supervision of a medical practitioner or pharmacist, by members of the medical service of the armed forces.

- The keeping of medicines and its supply to patients in hospitals or other institutions for the treatment of sick persons, under the direction of a **medical practitioner** and in accordance with the provisions of the Medicines and Related Substances Control Act, 1965, by any person **registered or enrolled under the Nursing Act**.
- The keeping of medicines and its supply by any person or organization performing a health service and authorized in writing by the Secretary for Health to acquire medicines for the performance of such service.

Disciplinary Powers of the Controlling Body

The controlling body has power to inquire into any complaint, charge, or allegation of improper or disgraceful conduct by any person and on finding such person guilty of such conduct, impose penalties prescribed in the Act.

Contraventions

Any person who contravenes any provision of this Act shall on conviction be liable to a fine.

3.33 Medical Schemes Act (MSA) – No 131 of 1998

Introduction

The purpose of the Act is to consolidate the laws relating to registered medical schemes, to provide for the establishment of the Council for Medical Schemes, to provide for the appointment of the Registrar of Medical Schemes, to make provision for the registration and control of certain activities of medical schemes, to protect the interests of members of medical schemes, to provide for measures for the coordination of medical schemes, and to provide for incidental matters.

Specifics

Council for Medical Schemes

The function of the Council is to protect the interests of the medical scheme members, control and co-ordinate the functioning of medical schemes in a manner that is complementary with the national health policy, establish criteria for the measurement of quality and outcomes of the relevant health services provided for by medical schemes, investigate complaints and settle disputes in relation to the affairs of medical schemes, collect and disseminate information about private health care, advise the Minister on any matter concerning medical schemes, and perform any other functions conferred on the Council by the Minister.

Medical Schemes

No person shall execute the business of a medical scheme unless that person is registered as a medical scheme under Section 24 of the Act.

No medical scheme shall purchase any insurance policy in respect of any relevant health service other than to reinsure a liability in terms of Section 26.

No person shall, without the consent of the Registrar, apply to his/her business a name which includes the words “medical scheme” which is likely to lead persons to believe that he/she carries on the business of a medical scheme, unless such business is registered under this Act.

No person shall be a member or be a dependent of more than one medical scheme.

Medical schemes must comply with the following conditions:

- May not make membership conditional upon that person purchasing or participating in any product, benefit or services provided by a person other than the medical scheme in terms of its rules.
- Officers must consist of persons who are fit and proper to manage the business.
- The medical scheme complies with or will be able to comply with any other provision of this Act.
- The medical scheme is or will be financially sound.
- The medical scheme has enough members who contribute or are likely to contribute to the medical scheme.
- The medical scheme does not or will not unfairly discriminate directly or indirectly against any person on one or more arbitrary grounds including race, age, gender, marital status, ethnic or social origin, sexual orientation, pregnancy, disability, and state of health.
- The registration of the medical scheme is not contrary to the public interest.

A medical scheme shall always maintain its business in a financially sound condition. A medical scheme shall not encumber its assets, allow its assets to be held by another person on its behalf, or directly or indirectly borrow money.

A medical scheme shall appoint at least one auditor. The appointment of an auditor shall not take effect unless it has been approved by the Registrar, it shall furnish a report or other document of particulars as contemplated in the *Public Accountants and Auditors Act* and furnish a copy thereof to the Registrar. The controlling body must appoint an audit committee of at least five members.

The Registrar may require additional particulars of that medical scheme as the Registrar may deem necessary. The Registrar may address enquiries to a medical scheme in relation to any matter connected with the business or transactions of the medical scheme.

The Council may remove from office a member of the controlling body of members of the controlling body of a medical scheme if it has sufficient reason to believe that the person concerned is not a fit and proper person to hold the office concerned.

General Provisions on Governances

At least 50% of the members of the governing body of members of the governing body shall be elected from amongst members. The duties of the governing body of members of the governing body shall be to control and ensure good governance with the detail thereof set out in the Act. The interests of beneficiaries in terms of the rules of the medical scheme must be always protected. The governing body must disclose annually to the Registrar any payment or considerations made to members of the governing body and must ensure that no person may act as broker unless the Council has granted accreditation to such a person.

3.34 Older Persons Act (OPA) – No 13 of 2006

Introduction

The Act was introduced to deal effectively with the plight of older persons by establishing a framework aimed at the empowerment and protection of older persons and at the promotion and maintenance of their status, rights, well-being, safety, and security; and to provide for matters connected therewith. The Act seeks to improve the quality of life of all citizens and to free the potential of each person and to respect the dignity and the right to have their dignity. It aims to facilitate accessible, equitable and affordable services to older persons and to empower older persons to continue to live meaningfully and constructively in a society that recognizes them as important sources of knowledge, wisdom, and expertise.

The objects of the Act are to (a) maintain and promote the status, well-being, safety and security of older persons, (b) maintain and protect the rights of older persons, (c) shift the emphasis from institutional care to community-based care in order to ensure that an older person remains in his or her home within the community for as long as possible, (d) regulate the registration, establishment and management of services and (e) combat the abuse of older persons.

Care is defined as physical, psychological, social, spiritual, nursing, first-aid to an older person and includes services aimed at promoting and maintaining the comfort, quality of life, and general well-being of that person.

In all actions and decisions that affect older persons, the older person's rights and best interest must be respected, protected, and promoted. The older person must be:

- Treated fairly and with respect and dignity.
- Treated equally and not be discriminated against.
- Protected against neglect, degeneration, and abuse.
- Protected against stress by applying a reconciliatory approach to issues.
- Protection of rights relating to property, inheritance and abuse.
- Assisting with speed and vigour and decisions should be taken swiftly.

Older persons must enjoy the following rights:

- Participate in community life in any position appropriate to his or her interests and capabilities
- Establish and participate in structures and associations for older persons
- Participate in activities that enhance his or her income-generating capacity
- Live in an environment catering for his or her changing capacities
- Have access opportunities that promote his or her optimal level of social, physical, mental, and emotional well-being.

Any stakeholder which includes civil society organizations, and persons in the public and private sector with an interest in the services provided to older persons, have been granted the right to question services not on par to protect the rights of older persons.

The Establishment of an Enabling and Supportive Environment – Chapter 2

The Minister of Social Development may issue national regulations, norms, and standards for acceptable service levels to be provided to older persons. These will apply to any person or institution supplying such services. Any person who provides a service to an older person must comply with all appropriate laws and policies as well as the norms and standards contemplated in chapter.

Services to older persons must comply with the following basic guidelines:

- Acknowledge the social, cultural, religious, and economic identity and contribution of the person.
- Ensure the participation of older persons in decision making.
- Acknowledge diversity.

- Provide older persons with the necessary information and training to enable them to make informed decisions.
- Provide basic care services for residents to remain independent for as long as possible.
- Ensure persons receive care services as and when required.
- Give support, assistance, and protection to those that need rehabilitation.
- Ensure that all services are available and accessible as and when needed.
- Prevent and combat any abuse. Abuse includes unlawful detention, medical sedation or shackling, deprivation of nutrition or medical care, neglect or exploitation.

Community-based care and support services - Chapter 3

An older person receiving community-based care services has in addition to the rights already discussed the right to reside at home, if possible, pursue opportunities for the development of his or her potential and benefit from family and community care and protection in accordance with the society's cultural values.

There are two broad based categories of services:

- Preventative and promotion services which ensure the independent living of an older person in the community in which the older person resides.
- Home-based care services which ensure, that a frail older person receives maximum care within the community through a comprehensive range of integrated services.

The Minister may develop community-based programmes for older persons that promote independent living, economic empowerment, recreational facilities, enjoying balanced meals, care services, skills development, and specific services to the extremely poor, home care improvement programmes for improved hygiene, rehabilitation, and respite care. Registration of Community-based Care and Support Services:

All community-based care, and support services must be registered with the Department of Social Development. Only juristic persons and trusts can be registered. The Department must also be advised when the service is terminated. No facility may be operated without the necessary registration. The Minister has the right to close the facility in case of non-compliance.

Service providers must ensure that their caregivers receive the prescribed training and that social and care workers are registered with the appropriate professional body.

Residential Facilities – Frail Care – Chapter 4

This chapter of the Act covers the admission to and living in a frail care facility. Once again, the emphasis is to keep older persons living in their familiar environment for as long as possible. The frail care facility is to be used for persons who are bedridden and require 24-hour care, are terminally ill, or suffer from advanced dementia.

Older persons that apply for admission or live in a residential facility have the right to:

- A representative on his/her behalf.
- Visitors.
- Use and possession of his/her personal belongings.
- Access to basic care and financial information of the facility.
- Privacy.
- Participate in social, religious and community events.
- Service of an own doctor.
- A 30 -day notice period if transferred or dismissed.

The Act makes provision for the supply of other supportive and recreational facilities in a community residential facility.

Prohibition on operation of unregistered residential facilities, and registration such facilities:

No person may operate a residential facility unless such facility has been registered. This does not apply to a private residence in which an older person is. A person who wishes to operate a residential facility must, in the prescribed format apply for registration.

Residents' Committee:

If more than 10 older persons reside in a residential facility, a residents' committee must be operative to look after the interests of the residents in the facility. The committee must ensure that:

- There is interaction between the residents of the residential facility and their families, the public in general and that committee.
- A quality service is provided.
- Personnel get the opportunity to be trained.
- Sound fiscal management is practiced.
- No neglect, abuse, or violation of human rights of residents takes place.
- Ensure the facility is run with a care management plan and individual care plans.
- Complaint procedures are in place.

- New appointments of staff are discussed before the appointment is made.
- The facility is run effectively.

Admission to the facility:

As far as the admission to the facility is concerned the following criteria apply:

- The person that applies may not be discriminated against and any rejected application must be put in writing.
- The new arrival to the facility must give his/her consent or the consent of his/her representative must be obtained.

The facility may be monitored and evaluated by the Department of Social Development. Visits to the site, interviews with residents, service providers and access to records to be able to complete a report on the facility, are provided for in the Act. A yearly report by the operator of the facility in the standard format is required within 60 days after year end.

Protection of Older Persons – Chapter 5

The provisions of this Act must not be construed as limiting any provision of the Domestic Violence Act, 1998 or as exempting any person from any duty or obligation imposed by that Act.

Anyone dealing with an older person must take all measures necessary to eliminate harmful traditional practices which may affect the welfare, health, life, or dignity of an older person.

Any professional person that provides care services is obliged to report to the Department any abuse or abusive practices, if he has noticed a general need for the older person to be protected or that the person needs certain care services. The Department has the right to act on the reported matter and correct the situation. The Act further prescribes the action that can be taken to rectify and prosecute the perpetrators. Abuse of older persons can entail physical, sexual, economic, or psychological abuse, and facility managers must be acutely aware of all these. Any person who suspects that an older person has been abused or suffers from an abuse-related injury must immediately notify the Director-General or a police official of his or her suspicion.

The balance of this Chapters sets out the procedures to follow should an abuse have taken place, or a suspicion has been raised about an abuse. This includes the possible removal of an older person to a place of safety.

General Conditions – Chapter 6

This chapter of the Act sets out the delegation of authority of the Minister and the Director General as well as the issuing of regulations. It also covers the penalties for contravening the Act.

Regulations to the Act – April 2010

The regulations are easy to read and can be found on the internet. The reader is recommended to page through the regulations to get an idea as to what is required of his organization. The Regulations cover the following:

- How to apply for subsidies.
- The contents of the contract with a service supplier.
- How to keep financial records and to report on them and how to manage the assets or the organization.
- How to register with the DOSD.
- Training of Caregivers and what the training should entail.
- Record keeping of residents.
- Terms of office of the members of the residential committee.
- Measures to promote the rights of older persons. Issues such as access to information, display of registration certificates, prevention, and reporting of abuse, etc.

The *national norms and standards regarding the acceptable levels of services to older persons and service standards for community-based care* is an important document which can be used for self-assessment. Please access the Regulations on the website – page 28 -70. Please keep affordability of your organization in place and list those areas you are not complying with and what you have done to mitigate the shortcoming.

The code of conduct for givers can be found in the regulations as well as all the applicable forms you might need.

In Conclusion

In summary the following issues must be kept in mind:

- Respect the Act as the overall regulation on all issues relating to older persons.
- Respond promptly and accurately to requests for information and keep in mind that the person may appeal any decisions that affect him/her.
- Persons living in the facility expect to be treated in accordance with the Act. They will be knowledgeable on all issues.
- Preventative care and home-based care must have priority over frail care.

- All services must comply with the Act and need to be registered with the Department of Social Development.
- Quality control and improvement should be a continuous process.
- Participation by residents in decision making is important.
- Conflict and tension must be removed as soon as possible. Older persons want to live in peace and tranquillity.
- Respect cultural and religious values.
- Residents should not be exploited or abused and when these incidents do occur, prompt action must be taken.
- Security of the residents must be ensured.
- Create opportunities for residents to interact socially, accomplish self-development and improve living quality in general.
- Create an enabling and supportive environment for persons to live in peace, contribute and take responsibility for each other.

3.35 Mental Health Care Act (MHCA) – No 17 of 2002

Introduction

The objects of this Act are to regulate the mental health care in a manner that makes the best possible mental health care, treatment and rehabilitation services available to the population within the limits of the available resources, to co-ordinate access to mental health care, treatment and rehabilitation services, to integrate the provision of mental health care services into the general health services environment, to regulate access to and provide mental health services, clarify the rights and obligations of mental health care users, and regulate the manner in which the property of persons with mental illness disability may be dealt with.

Specifics

Designated Health Care Institutions

Designated health establishments serve as psychiatric hospitals and/or rehabilitation centers. They must provide services at the appropriate levels, refer such person to health establishments that provide the appropriate level of service, and must ensure an authorized mental health care practitioner is designated to provide treatment.

Rights and Duties of Users

Every user must be respected, human dignity must be applied, and the person must be given privacy. The user must have consented to the care, may not be discriminated against on the mental health status of the person, is protected from exploitation, degrading treatment etc., and must be informed in an appropriate manner of his/her rights.

Review Governing Bodies

Review controlling bodies body are established throughout the country to consider appeals against decisions of the head of a health establishment, make decisions about mental health care services, make decisions on mental health care users, consider applications for transfer of mental health care users, and consider transfers of mental health care users to maximum security facilities.

Admission and Treatment

On receipt of the application, the head of the health establishment concerned must ensure that the person is examined by two mental health care practitioners where-after the institution decides on the level of treatment for the user. A mental health care user, spouse or next of kin may appeal against the decision of the head of the health establishment to the review controlling body. After six months of the commencement of care and every twelve months thereafter there must be a mental health care review conducted.

An application for involuntary care for the user to be subjected to may be made by the spouse, next of kin, parent etc. The Act sets out the detail as far as the procedures are concerned, objections that can be launched against decisions, reviews, etc.

State Patients

For state patients (Chapter VI) the Act prescribes what can and must be done and the rules as far as transfer to and from facilities, reviews, discharges, etc. are concerned.

Mentally Ill Prisoners

Chapter VII of the Act deals with mentally ill prisoners.

Care and Administration of the Property of Patients

A Master of a High Court may appoint an administrator to care for and administer the property of a mentally ill person. The 'what' and 'how' can be found in Chapter VIII of the Act.

Regulations

The Minister makes regulations on:

- Surgical procedures or medical or therapeutic treatment for mental health care.
- Setting of quality standards and norms.
- Establishment of maximum-security facilities for mental health care users.
- Seclusion of mental health care users.
- Establishment of child, adolescent, and geriatric facilities.
- Establishment and implementation of educational programmes.
- Transfer, removal, and transportation of mental health care users' records.
- Payment of maintenance costs and expenses.
- Estimated property value and annual income of a mentally ill person or persons.
- Authorisation and licensing of health establishments.

Offences and Penalties

Any person who is found guilty of an offence under this Act is liable on conviction to a fine or to imprisonment.

3.36 Nursing Act (NA) – No 33 of 2005

South African nursing council

The objectives of the Council are to:

- Serve and protect the public in matters involving health services generally and nursing services.
- Perform its functions in the best interests of the public and in accordance with national health policy as determined by the Minister.
- Promote the provision of nursing services that comply with universal norms and values.
- Establish, improve, control conditions, standards and quality of nursing education and training.
- Maintain professional conduct and practice standards.
- Promote and maintain liaison and communication with all stakeholders regarding nursing standards, and in particular standards of nursing.
- Advise the Minister on the amendment of this Act.

- Be transparent and accountable to the public in achieving its objectives and performing its functions.
- Uphold and maintain professional and ethical standards.
- Training in professional conduct.

The Council must:

- In all its decisions, take cognisance of national health policies and implement such policies in respect of nursing.
- Enter, remove from, or restore to the register the name of a person.
- Conduct examinations and appoint examiners and moderators and grant diplomas and certificates in respect of such examinations.
- Conduct inspections and investigations to ensure compliance with this Act and the rules and standards determined by the Council.
- Report to the relevant statutory body any non-compliance established after an inspection and investigation.
- Ensure that persons registered behave towards users of health services in a manner that respects their constitutional rights to human dignity, bodily and psychological integrity and equality, and that disciplinary action is taken against persons who fail to do so.
- Investigate complaints against persons registered and take appropriate disciplinary action against such persons to protect the interests of the public.
- Publish in the Gazette the details of the unprofessional conduct and the names and qualifications of the persons against whom disciplinary action was taken.
- Ensure that the register of persons registered is available to the public.
- Investigate and act against non-accredited nursing education institutions.
- Withdraw or suspend accreditation of a nursing education institution or nursing education programme if the education or training provided does not comply with the prescribed requirements and inform the relevant licensing authority.
- Determine the:
 - . scope of practice of nurses
 - . conditions under which nurses may practise their profession
 - . acts or omissions in respect of which the Council may take disciplinary steps
 - . requirements for any nurse to remain competent
- Determine prescribed licence or registration fees payable.
- Monitor the assessment by education and training providers, including the recognition of prior learning, register constituent assessors and moderators and grant diplomas and certificates in accordance with the requirements.
- Be regarded as an education and training quality assurer for all nursing qualifications.
- Issue an annual report within six months of the end of the financial year.

- Ensure that an annual budget is drawn up and that the Council operates within the parameters of such budget.
- Perform such other functions as may be prescribed.

The Council may:

- Institute or defend any legal action in its name.
- Appoint experts and advisers as may be required to assist the Council in the performance of its work.
- Delegate to any person or organization any function referred to in this section, accredit nursing education institutions and nursing education programmes and monitor all assessments by education and training providers.
- Carry out quality control inspections.
- Investigate complaints against any health establishment.
- Subject to prescribed conditions and upon payment of a prescribed fee, issue a licence for a professional nurse to conduct a private practice.
- Consider any matter affecting nursing and make representations to the Minister.
- Require nursing education institutions to submit annual returns of learner nurses and to submit any information that the Council may require.
- Require employers to submit annual returns of nurses in their employ and any other information necessary to enable the Council.
- In consultation with the Minister of Finance, establish, manage, and administer a pension or provident fund for the employees of the Council.
- Generally, do all such things as it may find necessary or expedient to achieve the objects of this Act.

Composition, Dissolution and Other Matters Relating to the Council

The Council consists of not more than 25 members, of whom fourteen must be registered in terms of Section 31(l)(a) and (b), appointed by the Minister considering their expertise in nursing education, nursing, community health, primary health care, occupational health, and mental health.

Disqualification, termination of officers and when and how they must vacate their offices is also set out in the Act. How the chairperson and vice chairperson are elected is explained as well. Other details regarding the operations of the Council can be obtained by consulting the Act.

Appointment of Registrar and Staff

The Minister appoints a Registrar of the Council to conduct his/her functions under this Act. The

appointment of the Registrar is subject to the conclusion of a written performance agreement. The term of office of a Registrar is five years, but the Minister may, after consultation with the Council, renew the Registrar's term of office. The Registrar may appoint such other persons, subject to the policies and guidelines of the Council, as he/she may think necessary to perform the functions.

Duties of Registrar:

- Exercise the powers and perform the functions assigned to him/her.
- Keep the registers in respect of practitioners with the name, physical address, qualifications, date of initial registration and such other particulars, including any detail the Council may determine.
- Update and maintain the registers correctly.
- Be the secretary of the Council and maintain the records of its meetings.
- Provide guidance and advice on compliance with this Act to the Council.
- Act with fidelity, honesty, integrity and in the best interest of the Council in managing its financial affairs.
- Disclose to the Council all material facts and information which in any way might influence the decisions or actions of the Council or the chairperson.
- Prevent any prejudice to the financial and administrative interests of the Council.

The Registrar may not:

- Act in a way that is inconsistent with the duties assigned to him or her.
- Use his position or privileges, or confidential information obtained, for personal gain or to improperly benefit another person.

Accounting Duties of Registrar

The Registrar must, in a format and for periods as may be prescribed, report to the Council on all revenue received and expenditure incurred by the Council in the format set out in the Act. He must assist the Council in performing the budgetary functions assigned to it, and provide the chairperson with the administrative support, resources, and information necessary for the performance of those functions. The Registrar is responsible for implementing, monitoring, and reporting monthly on the Council's approved budget.

EDUCATION, TRAINING, RESEARCH, REGISTRATION AND PRACTICE

Scope of Profession and Practice of Nursing

- A professional nurse is a person who is qualified and competent to independently practise

comprehensive nursing in the manner and to the level prescribed and who can assume responsibility and accountability for such practice.

- A midwife is a person who is qualified and competent to independently practise midwifery in the manner and to the level prescribed and who can assume responsibility and accountability for such practice.
- A staff nurse is a person educated to practise basic nursing in the manner and to the level prescribed.
- An auxiliary nurse or an auxiliary midwife is a person educated to provide elementary nursing care in the manner and to the level prescribed.

Registration as Prerequisite to Practice

- Subject to the Act, no person may practise as a practitioner unless he/she is registered to practise in at least one of the above-mentioned categories. The Minister introduces such other categories of persons to be registered to practise nursing as he/she considers necessary in the public interest.
- An employer must not employ or retain in employment a person to perform the functions pertaining to the profession of nursing, other than a person who holds the necessary qualification and who is registered.
- No person may use as a title any of the categories contemplated in subsection unless he/she is registered as such in terms of this section.
- A practitioner who wishes to register must apply in the prescribed manner to the Registrar.
- If the Registrar is satisfied and upon receipt of the prescribed registration fee, the Registrar issues a registration certificate.
- If the Registrar is not satisfied with the information and documentation submitted, the applicant is informed.
- The person in respect of whom a removal has been made must be notified thereof in writing and any certificate issued in respect of such registration is considered to have been cancelled.
- A person who contravenes any part of the Act is guilty of an offence and on conviction liable to a fine or to imprisonment.
- A person who has completed a programme qualifying him or her for registration in another category must apply to have his/her entry in the register altered.
- A person who has completed a programme leading to registration in a higher category must, upon application and after evaluation by the Council, have his/her entry in the register altered.
- A practitioner must notify the Registrar in writing of any change of particulars after such change.

Registration of Learners

- A person undergoing education or training in nursing must apply to the Council to be registered as a learner nurse or a learner midwife. The Council must register as a learner nurse or a learner midwife any person who has complied with the prescribed conditions and has furnished the prescribed particulars.
- The person in charge of a nursing education institution must notify and furnish to the Council information of each learner nurse who has commenced, completed, transferred to, or abandoned a nursing education and training programme.
- A health establishment must not allow access to clinical facilities for training purposes to anyone who is not registered in terms of this Act.

Limited Registration

- The Council may provide limited registration to a person who holds a qualification other than a qualification as defined to practise as a nurse if he/she:
 - . has a qualification that does not meet all the required standards of education and training.
 - . does not have all the required professional knowledge, skills, and ability; or
 - . is in the Republic for a limited period for the purpose of practice, research, or education.
- A person so registered may only be entitled to practise:
 - . for such period as the Council may determine, but not exceeding three years.
 - . under conditions determined by the Council.
- A person registered under this section who practises in contravention is guilty of an offence and liable on conviction to a fine or to imprisonment.

Conditions Relating to Continuing Professional Development

The Council may determine:

- Conditions relating to continuing professional development to be undergone by practitioners to retain such registration.
- The nature and extent of continuing professional development to be undergone by practitioners.
- The criteria for recognition by the Council of continuing professional development activities and accredited institutions offering such activities.

Community Service

A person who is a citizen of South Africa intending to register for the first time to practice a profession in a prescribed category must perform remunerated community service for a period

of one year at a public health facility.

Regulation of Research

The Council must ensure that the prescribed ethical conduct pertaining to research related to the practice of nursing is adhered to and may take appropriate disciplinary action against persons who act in contravention of such rules or any other law.

Education and Training

An institution intending to conduct a nursing education and training program to prepare persons for practice in any one of the categories contemplated in the Act must apply to the Council in writing for accreditation.

Use of Certain Titles

- A person who is registered in the appropriate categories may use the title “Registered Professional Nurse”, “Registered Midwife”, “Registered Staff Nurse”, “Registered Auxiliary Midwife” or “Registered Auxiliary Nurse” or the abbreviations “RPN”, “RM”, “RSN”, “RAM” or “RAN” respectively.
- A person who is following a programme of study in a nursing education and institution may use the title “Learner Nurse” or “Learner Midwife” or the abbreviations “L” or “LM” respectively.
- A person registered in terms of Section 40(2) may use the title “Community 30 Service Practitioner”.

POWERS OF THE COUNCIL WITH REGARD TO UNPROFESSIONAL CONDUCT

Inquiry by Council into Charges of Unprofessional Conduct

The Council may institute an inquiry into any complaint, charge, or allegation of unprofessional conduct against a practitioner or a director, manager, or owner.

GENERAL AND SUPPLEMENTARY PROVISIONS

Special Provisions Relating to Certain Nurses

Despite the provisions of this Act or any other law, the Council may register a person who is registered to assess, diagnose, prescribe treatment, keep, and supply medication for prescribed illnesses and health related conditions, if such person complies with certain conditions.

Appeal against Decisions of Council

A person aggrieved by a decision of the Council may within the prescribed period and in the prescribed manner appeal against such decision to an appeal committee.

On finding such person guilty of such conduct, the Council may impose any of the penalties contemplated in the Act.

OFFENCES BY PERSONS NOT REGISTERED

Penalties for Practicing while Not Registered

- Includes a professional nurse, midwife, staff nurse, auxiliary nurse, or auxiliary midwife.
- A person registered under this Act who misrepresents that he/she is competent or registered to practise nursing or practises in a capacity that he/she is not registered for is guilty of an offence.

Rules

The Council may make rules relating to:

- Conditions relating to continuing professional development to be undergone.
- The nature and extent of continuing professional development to be undergone by practitioners.
- The criteria for recognition by the Council of continuing professional development activities and of providers offering such activities.
- Any other matters which must be promulgated as rules under this Act.

3.37 Social Service Professions Act (SSPA) – No 110 of 1978

Objective of the Act

To provide for the establishment of a *South African Council for Social Service Professions* and to define its powers and functions, for the registration of social workers, student social workers, social auxiliary workers and persons practising other professions in respect of which professional boards have been established, for control over the professions regulated under this Act and for incidental matters.

COUNCIL AND PROFESSIONAL BOARDS

Council for Social Service Professions

There is hereby established a juristic person known as the *South African Council for Social Service*

Professions. The objects of the Council are to:

- Protect and promote the interests of the professions in respect of which professional boards have been established and to deal with any matter relating to such interests.
- Maintain and enhance the prestige, status, integrity, and dignity of the professions.
- Advise the Minister in relation to any matter affecting the professions.
- Control and exercise authority about all financial matters relating to the Council and the professional boards.
- Consult and liaise with relevant authorities on matters affecting the professional boards.
- Determine the qualifications for registration of social workers, social auxiliary workers and persons practising other professions in respect of which professional boards have been established.
- Regulate the practising of the professions and the registration of social workers, student social workers, social auxiliary workers and persons practising other professions.
- Determine the standards of professional conduct of social workers, student social workers, social auxiliary workers and persons practising other professions and to ensure that they are maintained.
- Exercise effective control over the professional conduct of social workers, student social workers, social auxiliary workers and persons practising other professions.
- Encourage and promote efficiency in and responsibility about the practice of the professions.
- Assist in the promotion of social services to the SA population.
- Advise the Minister on the amendment or adaptation of this Act to place greater emphasis on professional practice, democracy, transparency, equity, accessibility, and community needs and involvement.
- Control and exercise authority in respect of all matters affecting the training of persons in accordance with the developmental social welfare approach and the way the practices pursued the promotion of social services to the South African population.
- Investigate additional sources of funding for the Council.
- Promote liaison in the field of training relating to social services and promote the standards of such training.
- Promote and regulate inter-professional liaison between registered professions in the interest of the public.
- Co-ordinate the activities of the professional boards and act as an advisory and communicatory body for all professional boards.

Powers and Functions of the Council

The Council may, to achieve its objects:

- Acquire, hire, develop, mortgage, let or sell movable or immovable property.

- Spend and invest funds of the Council.
- Enter contracts.
- Appoint such persons who it deems fit for the carrying out of its functions.
- Undertake or cause to be undertaken any research or study on any matter relating to the profession of social work and other professions.
- Exercise or perform any power or function conferred or imposed upon it by or under this Act.
- Generally, take such other steps and perform such other acts as may be necessary for or conducive to the achievement of the objects of the Council.

Constitution of Council

This section of the Act sets out the appointment and dismissal of councilors, nomination procedures, terms of appointment, how meetings are to be conducted and the establishment of sub-committees of the Council.

Funds of Council

The funds of the Council shall consist of the moneys received by the Council in terms of this Act, the fines imposed and recovered, the moneys appropriated by Parliament, the moneys obtained by way of loans raised by the Council and any moneys accruing to the Council from any other source. The Council shall use its funds for defraying the expenditure incurred in the achievements of its objects.

Establishment of Professional Boards

The Minister shall, on the recommendation of the Council, establish a professional board about any social service profession. The Minister may change the professional boards about the professions for which the professional boards have been established and establish other professional boards.

Objectives of Professional Boards

The objectives of a professional board are to:

- Consult and liaise with other professional boards and relevant authorities.
- Assist in the promotion of social services to the South African population.
- Exercise authority in respect of all matters affecting the training of professionals.
- Promote liaison, in cooperation with the training institutions.

- Determine the minimum standards of education and training of persons practising the professions.
- Communicate to the Minister information on matters of public importance acquired by the professional board during the performance of its functions.
 - Maintain and enhance the dignity and integrity of the professions.
- Guide the professionals and protect the public in general.

Powers of Professional Boards

Professional boards may:

- Remove any name from a register or, upon payment of the prescribed fee, restore thereto, or suspend a registered person from practising his/her profession pending the carrying out of any inquiry.
- Appoint examiners and moderators, conduct examinations, and grant certificates, and charge the prescribed fees in respect of such examinations or certificates.
- Approve training schools.
- Consider any matter affecting any profession and make representations or take such action in connection therewith as the professional board considers advisable.
- Upon application by any person, recognise any qualification held by him or her as being equal, either wholly or in part, whereupon such person shall be deemed to hold such prescribed qualification.
- After consultation with any other professional board or boards, establish a joint standing committee or committees of the board or boards.
- Perform such other prescribed functions, and generally do all such things as the professional board considers necessary or expedient to achieve the objects.

REGISTRATION OF SOCIAL WORKERS, STUDENT SOCIAL WORKERS, SOCIAL AUXILIARY WORKERS AND PERSONS PRACTISING OTHER PROFESSIONS

Unregistered Persons

No person shall:

- For gain, directly or indirectly, in any manner whatsoever practise the professions in respect of which professional boards have been established, unless he/she has been registered.
- Give instruction on any aspect of any subject in connection with a profession in respect of which a professional board has been established at a training institution unless he/she has been registered.

- In any manner pretend to be a social worker, student social worker, social auxiliary worker or a person practising another profession in respect of which a professional board has been established, while he/she has not been registered.

In so far as any person undergoes practical training in a profession in respect of which a professional board has been established as a requirement for the acquisition of a prescribed qualification at a training institution, he/she shall be deemed not to practise the profession in respect of which a professional board has been established, provided he/she has been registered.

Any person who contravenes any provision as per the above shall be guilty of an offence and on conviction be liable to a fine or to imprisonment.

Registration of Social Worker

The Council may, on application made in the prescribed manner, register as a social worker any person who holds the prescribed qualifications and satisfies the prescribed conditions, and who satisfies the Council that he/she is a fit and proper person to be allowed to practise the profession of social work. The Registrar shall issue to any person registered a certificate of registration. Any person registered in terms of this section or who is deemed to have been registered as a social worker, may use the title *social worker*.

Registration of Student Social Workers

The Council may, on application made in the prescribed manner, register as a student social worker any person who studies the subject Social Work at a training institution, and who satisfies the prescribed conditions.

Registration of Additional Qualifications and Specialities

The Council may, from time to time, prescribe the degrees, diplomas or certificates which may be registered as additional qualifications or the proficiencies which may be registered as specialities.

Qualifications Obtained Outside the Republic of South Africa (RSA)

No qualification obtained by virtue of examinations conducted by a training institution situated outside the RSA shall be prescribed unless:

- Such qualification will entitle the holder thereof to practise as a social worker or person practising another profession in respect of which a professional board has been established in the country or state in which such training institution is situated.
- The Council is satisfied that possession of such qualification indicates a standard of professional education and training not lower than that prescribed in respect of the education and training of social workers or persons practising other professions within the Republic.

Registration of Social Auxiliary Workers

The Council may on application register any person as a social auxiliary worker who holds any appropriate qualification, complies with the prescribed conditions, and satisfies the Council that he is a fit and proper person to be registered as a social auxiliary worker.

The Council may by rule prescribe the qualifications which entitle the holder thereof to registration as a social auxiliary worker, and the conditions subject to which such registration may take place. Different qualifications and conditions may be prescribed in respect of different categories of social auxiliary workers.

Registration of Persons Practising Other Professions

The Council may on application register any person who wishes to practise a profession in respect of which a professional board has been established, other than social work, and who holds an appropriate qualification, complies with the prescribed conditions, and satisfies the professional board concerned that he/she is a fit and proper person to be registered as such. The Council may prescribe the qualifications obtained in the RSA which will entitle the holder thereof to registration and the conditions subject to which such registration may take place. Different qualifications and conditions may be prescribed in respect of different categories of persons. A person may be registered with more than one professional board.

Registration of Students of Other Professions

The Council may on application register as a student any person who studies a profession, other than social work, in respect of which a professional board has been established at a training institution and who satisfies the prescribed conditions.

Keeping of Registers

The Registrar shall keep separate registers in respect of social workers, student social workers, social auxiliary workers and persons practising other professions in respect of which professional boards have been established and shall record in the appropriate register the prescribed particulars in the prescribed manner in respect of every such social worker, student social worker, social auxiliary worker and person.

DISCIPLINARY POWERS OF THE COUNCIL

Inquiry by the Council into Alleged Unprofessional or Improper Conduct

The Council may inquire into alleged unprofessional or improper conduct on the part of a social worker, student social worker, social auxiliary worker or person practising another profession in respect of which a professional board has been established.

Disciplinary Powers of the Council

Any person who, after an inquiry held by the Council, has been found guilty of unprofessional or improper conduct, shall be liable to one or other of the following penalties, namely a reprimand or a caution, suspension of his registration for a specific period, the cancellation of his registration or a fine.

GENERAL PROVISIONS

Legal Aid at Inquiries

The Council may appoint any person who is not a member of the Council but who is experienced in the administration of justice, to be present as an assessor at any inquiry under this Act, to advise the Council or the committee holding the inquiry on questions of law, procedure, or evidence.

Appeal against Refusal, Penalty, or Removal from Register

Any person aggrieved by the refusal of the Council or a committee to register him or her under this Act or to restore his/her name to a specified register or by any penalty imposed on him or her or by the removal of his/her name from a register, may within a period of three months after the date of such refusal, imposition of penalty or removal, appeal to an appeal committee.

Rules

The Council may, after consultation with the professional board concerned, make rules relating to:

- The conduct of social workers, student social workers, social auxiliary workers or persons practising other professions.
- The acts or omissions of a social worker, student social worker, social auxiliary worker or person practising another profession which shall constitute unprofessional or improper conduct.
- The powers, duties, and conditions of service of the Registrar.
- The institution, powers, and functions of committees.
- The tariff of fees serving as a guide for the fees which may be charged in respect of professional services rendered by a social worker, student social worker, social auxiliary worker or person practising another profession.
- Any matter which the Council considers necessary or expedient for the achievement or promotion of its objects or for the exercise of its powers or the performance of its functions.

Regulations

The Minister may, on the recommendation of the Council, make regulations relating to:

- The fees which shall be paid annually.
- The allowances which may be paid to members of the Council and of committees in respect of the carrying out of their function.
- The minimum requirements for the education and training, and the nature, content and duration of the curricula and practical training, which shall be a requirement for the acquisition of a prescribed qualification.
- The form of any notice or summons given or served under this Act. The documents which shall accompany any application in terms of this Act.

3.38 Protection of Harassment Act (No 17 of 2011)

Introduction

To provide for the issuing of protection orders against harassment; and to effect consequential amendments to the Firearms Control Act and to provide for matters connected therewith. Afford victims of harassment an effective remedy against such behavior and introduce measures which seek to enable the relevant organs of state to give full effect to the provisions of this Act.

Protection Orders

- A complainant may, in the prescribed manner, apply to the court for a protection order against harassment.
- The court must, as soon as is reasonably possible, consider an application submitted to it in terms of the act and may, for that purpose, consider any additional evidence it deems fit, including oral evidence or evidence by affidavit if the respondent is engaging or has engaged in harassment, is being or may be suffered by the complainant or a related person because of that conduct. If a protection order is not issued immediately the protection must be accorded by the interim protection.
- If the respondent does not appear on a return date referred and if the court is satisfied that a proper service has been affected on the respondent; and the application contains *prima facie* evidence that the respondent has engaged or is engaging in harassment the court must issue a protection order.
- The court may, by means of a protection order, including an interim protection order, prohibit the respondent from engaging in or attempting to engage in harassment, enlisting the help of another person to engage in harassment or committing any other act as specified in the protection order, the court may impose any additional conditions on the respondent.
- The court may impose any additional conditions on the respondent which it deems reasonably necessary to protect and provide for the safety or well-being of the complainant or related person.
- Whenever a court issues a protection order, including an interim protection order, the court must make an order authorising the issue of a warrant for the arrest of the respondent, in the prescribed form; and suspending the execution of that warrant subject to compliance with any prohibition, condition, obligation or order imposed.
- The court may order a member of the South African Police Service to seize any weapon in the possession of or under the control of a respondent.
- A complainant or a respondent may, upon notice to the other party and the court concerned, apply for the variation or setting aside of a protection order.
- The court may only make an order as to costs against any party if it is satisfied that the party in question has acted frivolously, vexatious, or unreasonably.

3.39 Domestic Violence Act (No 116 of 1998)

Purpose

This Act affords the victims of domestic violence the maximum protection from domestic abuse that the law can provide; and to introduce measures which seek to ensure that the relevant

organs of state give full effect to the provisions of this Act, and thereby convey that the State is committed to the elimination of domestic violence.

Specifics

- “Domestic violence” means physical-, sexual-, emotional-, verbal-, psychological-. And economic abuse, intimidation, harassment, stalking, damage to property, entry into the complainant’s residence without consent where the parties do not share the same residence, by other controlling or abusive behaviour towards a complainant where such conduct harms, or may cause imminent harm to the safety, health, or wellbeing of the complainant.
- Economic abuse includes: the unreasonable deprivation of economic or financial resources to which a complainant is entitled under law or which the complainant requires out of necessity, including household necessities for the complainant, and mortgage bond repayments or payment of rent in respect of the shared residence.

Duty to assist and inform complainant of rights

- Any member of the South African Police Service must, at the scene of an incident of domestic violence or as soon thereafter as is reasonably possible, or when the incident of domestic violence is reported, render such assistance to the complainant as may be required in the circumstances, including assisting, or deciding for the complainant to find a suitable shelter and to obtain medical treatment.
- A peace officer may, without warrant, arrest any respondent at the scene of an incident of domestic violence whom he or she reasonably suspects of having committed an offence containing an element of violence against a complainant.

Application for protection order

- Any complainant may, in the prescribed manner, apply to the court for a protection order.
- The court must as soon as be reasonably possible consider an application submitted consider such additional evidence as it deems fit, including oral evidence or evidence by affidavit and if a protection order is not issued, immediately issue an interim protection order against the respondent, in the prescribed manner.
- If the respondent does not appear on a return date contemplated and if the court is satisfied that proper service has been affected on the respondent; and the application contains *prima facie* evidence that the respondent has committed or is committing an act of domestic violence, the court must issue a protection order in the prescribed form.

- Whenever a court issues a protection order, the court must make an order authorising the issue of a warrant for the arrest of the respondent subject to compliance with any prohibition, condition, obligation, or order imposed in terms of the act.
- A complainant or a respondent may, upon written notice to the other party and the court concerned, apply for the variation or setting aside of a protection order referred to in the prescribed manner.
- Notwithstanding the provisions of any other law, any person who contravenes any prohibition, condition, obligation, or order imposed is guilty of an offence and to a fine or imprisonment.

Other Acts

3.40 Fund-raising Act - No 107 of 1978

Introduction

Contribution may only be collected if the governing body is authorized to do so by the Act and the collection is done in accordance with the Act. An application must be submitted and an approval in writing (registration certificate) obtained for the fundraising. The governing body may appeal against the Department of Social Development's decision to not issue approval or withdraw a previous approval.

The Department may, from time to time, amend the authority given if the governing body has not complied with the set rules. The authority may also be withdrawn in serious cases of non-compliance.

Specifics

Raising of Funds

The funds raised in accordance with the authority may only be used for the purposes as set out in the authority and not for any other purpose. Reasonable cost may be incurred in the fundraising process and offset against the funds collected.

A person who collects contributions on behalf of the governing body must be authorised by the governing body by way of a letter stating that specific person is sanctioned to do the collection on behalf of the governing body.

Payment of Remuneration

Where remuneration is paid to the fundraiser by the company an agreement must have been entered into by the parties. The fact that the person is paid for the collections, he/she does must be stated in the letter as per the above. The person or potential person from whom funds are collected must be informed of the fact that the collector is paid and should on request reveal the agreement between him or her and the governing body. The fact that remuneration is paid for collection must also be shown in any adverts, notices, emails, and any other media that is used. The above rule does not apply to assistants who help the governing body in raising funds at bazaars, entertainment venues, competitions, exhibitions, or other functions.

Financial Records

Financial records must be kept of the funds raised and the expenditure incurred, and the necessary reports must be submitted with the audited financial statements to the Department. If the fundraising governing body is dissolved the assets must be distributed in accordance with the constitution of the fund or as determined by the Minister if the constitution lacks the provision.

3.41 Non-profit Organizations Bodies Act (NPOA) – No 71 of 1997

Introduction

The purpose of the Act is to encourage and support non-profit governing bodies in their contribution to meet the various needs of South Africans by establishing a regulatory framework, setting standards, ensuring good governance, and ensuring transparency and responsibility. A directorate of non-profit governing bodies has been established.

Specifics

Constitution

The non-profit governing body must have a constitution which must include the minimum requirements set out in the Act before it can be registered. The objectives of the governing body and the distribution of funds are important in the constitution. A registration number is issued by the Directorate. Changes to the constitution must be approved by the directorate.

Accounting Records

The registered governing body must keep accounting records and have the figures audited yearly. A yearly report must be submitted to the Directorate with the details as required by the Act. Non-compliance with the constitution, other conditions set by the Act, incomplete accounting records or reports not submitted can lead to the de-registration of the governing body.

Access to Information

The public has access to all the information of a non-profit governing body via the Directorate. Offences include misrepresentation by the governing body, using a registration number without being registered, or winding up the non-profit governing body in ways that are not in accordance with the requirements of the constitution.

3.42 Public Benefit Organizations (PBO)

Introduction

Registering a governing body as a Public Benefit Organization (PBO) in terms of the *Income Tax Act (ITA), No 58 of 1962*, has income tax benefits for both the governing body and its donors. Governing bodies already registered as an NPO may apply for such registration with South African Revenue Services (SARS).

Specifics

Most retirement facilities and medical care service units will qualify for the registration under the welfare, health care or housing categories. SARS will need to approve the founding document and will set the conditions to which the governing body must adhere and prescribe. The founding document may not be changed without approval of SARS.

The detailed conditions and requirements for the registration of a PBO can be found in the *Income Tax Act*. Please remember that once registered, the governing body is obliged to submit annual returns to the Tax Exemption Unit of SARS together with the annual financial statements, as well as other supporting documents and receipts required in terms of Section 18A.

The following benefits can be achieved as a registered PBO:

- The governing body is exempt from paying both income tax and capital gains tax.

- A donor can deduct a donation from his/her/their taxable income up to an annual maximum as stipulated in the Act. The claim is supported by the 18A tax receipt.
- A donation is exempt from donations tax.
- A bequest from an estate of a deceased person is exempt from paying estate duty.
- No transfer or stamp duties are payable.
- A PBO governing body is exempt from payment of the Skills Development Levy.

3.43 Private Security Industry Regulatory Act (PSIRA) – No 56 of 2001

Introduction

The purpose of the Private Security Industry Regulatory Authority (PSIRA) is to protect the constitutional rights of all people to life, safety and dignity through the effective promotion and regulation of the private security industry.

Specifics

The Act intends to:

- Promote a legitimate private security industry that acts in terms of the principles contained in the RSA Constitution and other applicable laws.
- Promote a private security industry that is characterized by professionalism, transparency, accountability, equity, and accessibility.
- Conduct an ongoing study and investigation of the rendering of security services and practices of security service providers.
- Institute legal proceedings against transgressors of the security standards.
- Receive and consider applications for registration and renewal of registration as a security service provider.
- Suspend or withdraw the registration status of a security service provider.
- Develop and maintain standards and regulate practices in connection with the occupation of security service providers and people in the employ of the industry.
- Take steps to protect and assist security officers and other employees against exploitation or abuse.
- Promote ambitious standards in the training of security service providers and prospective security service providers.
- Develop and maintain a computerized database to store information concerning the industry.
- Provide information promoting and encouraging compliance with the security standards and the Code of Conduct for Security Service Providers.
- Determine charge and collect fees for services rendered by the Authority.

Registration

Anybody that provides security services (internal or as a service to others) must be registered as a security provider with a list of information required including fingerprints of all the applicants.

Membership fees are payable by the facility and its staff. A yearly renewal of the registration and the certificate is necessary.

Complaints

The public may and can contact the Regulator and lodge any complaint. These will be investigated immediately.

Conduct Rules

The security service provider must conduct its business in accordance with the industry's conduct rules. Action will be taken by any service provider that does not obey the conduct rules and the security service certificate can be withdrawn under certain circumstances.

Inspections

Inspectors are appointed by the Regulator who can visit a service provider at any time to perform an audit to ensure all legislation and the code of conduct are followed.

Other Rules

Other rules that are to be followed include training of staff, uniform standards, record keeping, the use of firearms and equipment and many others. Information must be kept confidential and no information about the business and its staff or its customers may be revealed to anybody.

Notices

The Regulators has issued many notices which must be adhered to as well. They cover minimum wages, employment conditions, etc.

3.44 National Environmental Management Act (NEMA) – No 107 of 1998

Introduction

The objectives of the Act are to:

- Guide the actions that may affect the environment and shall apply to respect, protect, promote, and fulfil the social and economic rights of the RSA Constitution and in particular the basic needs of categories of persons disadvantaged by unfair discrimination.
- Place people and their needs at the forefront of its concern, and serve their physical, psychological, developmental, cultural, and social interests equitably.
- Ensure development is socially, environmentally, and economically sustainable including that:
 - . The disturbance of ecosystems and loss of biological diversity are avoided and minimised.
 - . Pollution and degradation of the environment are avoided and minimised.
 - . The disturbance of landscapes and sites that constitute the nation's cultural heritage is avoided and minimised.
 - . Waste is avoided or minimised and re-used or recycled where possible and otherwise disposed of in a responsible manner.
 - . The use and exploitation of non-renewable natural resources is responsible and considers the consequences of the depletion of the resource.
 - . The development, use and exploitation of renewable resources and the ecosystems of which they are part, do not exceed the level beyond which their integrity is jeopardised.
 - . A risk-averse and cautious approach is applied.
 - . Negative impacts on the environment and on people's rights be anticipated and prevented.
 - . Environmental justice must be pursued so that adverse environmental impacts shall not be distributed in such a manner as to unfairly discriminate against any person.
- Equitable access to environmental resources, benefits, and services to meet basic human needs and ensure human well-being must be pursued.
- The participation of all interested and affected parties in environmental governance must be promoted.
- Decisions must consider the interests and needs of all affected parties.
- Community wellbeing and empowerment must be promoted through environmental education, the raising of environmental awareness, the sharing of knowledge economic and environmental impacts of activities.
- The right of workers to refuse work that is harmful to human health or the environment and to be informed of dangers must be respected and protected.

- Global and international responsibilities relating to the environment must be discharged in the national interest.
- The costs of remedying pollution, environmental damage, and adverse health effects and of preventing and controlling environmental damage or adverse health effects must be paid for by those responsible.
- Sensitive, vulnerable, highly dynamic, or stressed ecosystems, such as coastal shores, estuaries, wetlands, and similar systems require specific attention in management and planning procedures, especially where they are subject to significant human resource usage and development pressure.

Specifics

National Environmental Advisory Forum

The National Environmental Advisory Forum has been established to ensure compliance with the Act and advise the Minister on all matters relating to environmental management.

Committee for Environmental Coordination

The Committee for Environmental Coordination has been established with the objective to promote the integration and coordination of environmental functions by the relevant organs of state and to promote the achievement of the purpose and objectives of environmental implementation plans and environmental management plans. The Committee scrutinizes reports and makes recommendations on the implementation plans submitted to it. It investigates and recommends the establishment of mechanisms in each province for providing a single point in the province for the receipt of applications for authorizations, licenses and similar permissions required in accordance with the Act.

Environmental Implementation Plans and Management Plans

Every national department exercising functions involving the management of the environment must prepare an environmental implementation and management plan every four years.

The purpose of these plans is to co-ordinate and harmonies the environmental policies, plans, programs, and decisions of the various national departments to promote and protect a sustainable environment, and to minimize the duplication of procedures and functions and to promote consistency in the exercise of functions that may affect the environment, and to enable the Minister to monitor the achievement of the plan and its actions. The content and how these plans are to be made operative are specified in the Act.

Integrated Environmental Management

The objective is to ensure the integrated management of all environmental related activities, making of all decisions which may have a significant effect on the environment, identify, predict, and evaluate the actual and potential impact on the environment, socio-economic conditions, and cultural heritage. Also, to ensure that the effects of activities on the environment receive adequate consideration before actions are taken, and to ensure the consideration of environmental attributes in management and decision-making which may influence the environment.

International Obligations and Agreements

Where South Africa is not yet bound by an international environmental instrument, the Minister makes recommendations regarding accession to and ratification of international environmental instrument. Where South Africa is a party to an international environmental instrument, the Minister publishes these provisions of the international environmental instrument in the *Gazette*.

Compliance, Enforcement and Protection

Every person who causes, has caused, or may cause significant pollution or degradation of the environment must take reasonable measures to prevent such pollution or degradation from occurring, continuing, or recurring, or, in so far as such harm to the environment is authorized by law or cannot reasonably be avoided or stopped, to minimize and rectify such pollution or degradation.

If urgent action is necessary for the protection of the environment a directive is issued to report and fix the environmental damage. The Director General may in respect of the damage done recover costs or claim proportionally from any other person who benefited from the activities undertaken by him. Court cases can be instituted as well.

Protection of Workers Refusing to Do Environmentally Hazardous Work

No person is civilly or criminally liable or may be dismissed, disciplined, prejudiced, or harassed on account of having refused to perform work if the person in good faith and believed at the time of the refusal that the performance of the work would result in an imminent and serious threat to the environment.

Access to Environmental Information and Protection of Whistle-blowers

Every person is entitled to have access to information held by the State and organs of state which relates to the implementation of this Act and any other law affecting the environment and future

threats to the environment, including any emissions to water, air or soil and the production, handling, transportation, treatment, storage and disposal of hazardous waste and substances.

No person is civilly or criminally liable or may be dismissed, disciplined, prejudiced, or harassed on account of having disclosed any information, if the person in good faith believed at the time of the disclosure that he/she was disclosing evidence of an environmental risk.

Legal Standing to Enforce Environmental Laws

Any person or group of persons may seek appropriate relief in respect of any breach of any provision of this Act.

Private Prosecution

Any person may in the public interest or in the interest of the protection of the environment institute and conduct a prosecution in respect of any breach or threatened breach of any duty.

Environmental Management Cooperation

The Minister and every MEC and municipality may enter into environmental management cooperation agreements with any person or community for the purpose of promoting compliance with the principles laid down in this Act.