

The Contemporary Gazette

relevant new legislation for your business



SOUTH AFRICAN INSTITUTE OF
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■ YOUR WEALTH

SAIPA Your Law : Volume 14 Issue 5, 18 March 2019

This newsletter

This newsletter overviews new relevant National laws up to **18th March 2019**. Log-in to www.gazette.co.za, peruse the list and follow the hyperlinks to laws that interest you. Please note that **[words in bold brackets]** in www.gazette.co.za show proposed deletions, and underlined words in www.gazette.co.za show proposed insertions - this allows you to see current and planned requirements at the same time, and helps with giving context to changes/proposed changes.

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Financial

1. DRAFT CONDUCT OF FINANCIAL INSTITUTIONS BILL: PROMOTION, MARKETING AND DISCLOSURE

Note: Previous overviews can be found [here](#).

Chapter 6 of the Draft Conduct of Financial Institutions Bill deals with the promotion, marketing and disclosure of [financial products](#) and [financial services](#).

Purpose

The purpose of the Chapter and conduct standards prescribed thereunder is to:

- (i) Ensure that financial customers are given clear, complete and accurate information about a financial product or a financial service across its life cycle;
- (ii) Enable that customer to access whether it meets his or her needs, make comparisons across similar financial products and financial services; and
- (iii) Hold the financial institution to account for unfair treatment.

Principles

A financial institution must ensure that financial products and financial services are promoted and marketed to financial customers in a way that is clear, fair, unambiguous and not misleading.

In addition a financial customer must be given adequate and clear information, and be kept appropriately informed to place him or her in a position to make informed decisions regarding the financial product or financial service. This must be done before, during and after the conclusion of a contract or agreement for the provision of such a product or a service. The financial customer must, amongst others, be placed in a position to make informed decisions about whether the product or service meets his or her needs and expectations.

Promotion and marketing

A financial institution:

- (i) Must, prior to publishing promotional and marketing material, take reasonable measures to ensure that the information provided in such material complies with Chapter 6 and the conduct standards prescribed thereunder;
- (ii) Must at all times ensure that any publication of promotional and marketing material relating to its business, activities, financial products or financial services, published by another on its behalf or of which it is aware or ought to be aware, is likewise compliant; and
- (iii) Remains responsible for the manner in which a financial product issued by it or a financial service rendered by it is promoted or marketed, even where the financial institution relies on another person to promote or market it on its behalf.

Promotional and marketing material of a financial institution:

- (i) Must be appropriate to the needs and reasonably assumed level of knowledge of the financial customers at whom it is targeted;
- (ii) May not be misleading or likely to mislead, deceptive, fraudulent, contrary to the public interest or contain incorrect statements;
- (iii) Must use clear, plain and unambiguous language, and take into account the needs and reasonably assumed level of knowledge of the [retail financial customers](#) to whom it is targeted.

A financial institution which is not a [small enterprise](#) must have processes and procedures for the approval of promotional and marketing material by a person of appropriate seniority and expertise within the business of the financial institution. These processes and procedures must form part of the required [governance policy](#).

Disclosure

A financial institution must make a financial customer aware of all relevant facts that could influence the financial customers' decisions relating to the financial product or financial service. This must be done before, during and after the conclusion of a contract for the provision of that product or service.

The relevant facts that must be disclosed include, but are not limited to:

- (i) Benefits and risks in relation to the financial product or financial service;
- (ii) All costs to the financial customer in relation to the supply of that product or service;
- (iii) Contractual obligations on the financial customer and the financial institution;
- (iv) Consequences for each party should there be a breach of contract; and
- (v) Recourse options for the financial customer in the case of a dispute with the financial institution, or a related intermediary, in relation to its supply of the product or service.

A financial institution must make disclosures to financial customers that:

- (i) Use plain language that is clear, unambiguous and appropriate for the target market;
- (ii) Are adequate, appropriate, timely, relevant and complete;
- (iii) Are factually correct and not misleading or deceptive;
- (iv) Promote understanding of the financial product or financial service being provided; and
- (v) Promote comparison across similar financial products or financial services.

When making disclosures, a financial institution must take into account:

- (i) The nature and complexity of the financial product or financial service concerned; and
- (ii) The needs and reasonably assumed level of knowledge, understanding and experience of financial customers at whom the disclosure is targeted.

Conduct standards

The Financial Services Conduct Authority is to be empowered to prescribe conduct standards providing for additional requirements, limitations or prohibitions on promotion, marketing and disclosure, including, but not limited to:

- (i) The design, positioning of words, display and presentation of promotional and marketing material;
- (ii) Information, data, descriptions and disclosures in promotional and marketing material;
- (iii) The appropriateness of the medium used for promoting and marketing a financial product or service;
- (iv) Identification of the financial institution that is financially liable or accountable for the product or service;
- (v) Direct marketing, product and services descriptions, bait marketing, negative option marketing;

- (vi) Inducements, third party arrangements, loyalty programmes and competitions;
- (vii) The publication of prices, investment performance and projected values contained in material;
- (viii) Comparative promotional and marketing practices;
- (ix) False, misleading or deceptive representations, and prohibited and predatory marketing practices;
- (x) Puffery, endorsements and value judgments, matters of opinion or subjective assessments;
- (xi) Remedial actions to be taken for inaccurate, unclear, misleading or fraudulent material;
- (xii) The provision of information in plain and understandable language;
- (xiii) Standardised point-of-sale disclosure documents, or key information documents;
- (xiv) Restrictions on unsolicited communications between a financial institution that provides a financial product or financial service and a financial customer before contracting and once the contractual relationship is terminated; and
- (xv) Disclosures in relation to financial products where membership is a requirement of employment.

With regard to disclosures, the Conduct Authority may prescribe conduct standards relating to:

- (i) The person responsible for making certain disclosures;
- (ii) Required disclosures;
- (iii) The appropriateness of certain disclosures;
- (iii) The content of and accuracy of disclosures; and
- (iv) The method and timing of disclosures;

Conduct standards may distinguish between promotional and marketing materials and disclosures:

- (i) Targeted at different segments of financial customers; or
- (ii) Relating to different financial products and financial services.

They may include providing that:

- (i) Certain requirements do not apply in relation to a category, sub-category or type of financial customer, financial product or financial service; or
- (ii) More stringent requirements apply in relation to a specified category, sub-category or type of financial customer, financial product or financial service.



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Financial

2. FINANCIAL INTELLIGENCE CENTRE ACT: DRAFT REGULATIONS



Electronic transfer of money to SA or from SA

Draft regulations have been gazetted to supplement the provisions of [section 31](#) of the Act, which section has not commenced yet.

The nett effect of the draft regulations, read with section 31, will be to provide that:

(i) An [accountable institution](#) that sends [R5 000,00](#) or more by EFT out of South Africa, or receives [R5 000,00](#) or more by EFT from outside of South Africa on behalf of another person, or on the instruction of another person must:

- [As soon as possible](#), but not later than 3 days after a natural person or any of his or her employees, or any of the employees of officers of a legal person or other entity, has become aware of a fact of an international funds transfer that has exceeded [R5 000,00](#);
- Make an [international funds transfer report](#), together with the [prescribed particulars](#) concerning the transfer, to the Centre;

(ii) Any person or institution which [fails to provide the information to be reported](#) concerning an international funds transfer report is guilty of an offence, and is non-compliant and subject to an administrative sanction:

- Any person or institution convicted of an offence under [regulation 29](#) is liable to imprisonment for a period not exceeding three years or a fine not exceeding R1 million;
- A person convicted of an offence mentioned in [section 56](#) (failure to report electronic funds transfers), is liable to imprisonment for a period not exceeding 15 years or to a fine not exceeding R100 million; and
- [Section 45C](#) (administrative sanctions) will apply to a person that is subject to an administrative sanction.

Cash transactions

The draft regulations also propose amending the requirements relating to cash transaction reporting.

The nett effect of the draft regulations, read with [section 28](#) (cash transactions above prescribed limit), will be to provide that an [accountable institution](#) and a [reporting institution](#) must:

(i) Report to the Centre the prescribed particulars, [as amended](#), concerning a transaction concluded with a client if in terms of the transaction an amount of cash in excess of [R50 000,00](#) is:

- Paid by it to the client, or to a person acting on behalf of the client, or to a person on whose behalf the client is acting; or
- Received by it from the client, or from a person acting on behalf of the client, or from a person on whose behalf the client is acting; and

(ii) A cash threshold report must be sent to the Centre [as soon as possible](#) but not later than 3 days after a natural person or any of his or her employees, or any of the employees of officers of a legal person or other entity, has become aware of a fact of a cash transaction that has exceeded R50 000,00.

Note: In terms of the media statement that accompanied the draft regulations, cash transactions in excess of R50 000,00 over a 24 hour period will not be treated as a single transaction.

Comment deadline: 1 April 2019.

GN115 GG42267/28 February 2019 (Incorporated into [Financial Intelligence Centre Act](#) and [Regulations](#))



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Information

3. CRITICAL INFRASTRUCTURE BILL

Critical infrastructure

Version D of the Bill has been published. The Bill intends to regulate:

- (i) Infrastructure (Any building, centre, establishment, facility, installation, pipeline, premises or systems needed for the functioning of society, the Government or enterprises of the Republic, and includes any transport network or network for the delivery of electricity or water);
- (ii) That the Minister responsible for policing, on recommendation of the Critical Infrastructure Council, **declares** to be critical **as its**:
 - Functioning is essential for the economy, **national security** (referencing the Constitution principles rather than a fixed definition), public safety and the continuous provision of **basic public services**; and
 - Its loss, damage, disruption or immobilisation may severely prejudice the functioning or stability of the Republic; the public interest with regard to safety and the maintenance of law and order; and **national security**.

Note: The definition of national security references the Constitution principles rather than fixed parameters.

Person in control of a critical infrastructure

The **person in control of a critical infrastructure** must:

- (i) Take such steps as may be prescribed to secure such critical infrastructure at that person's own expense;

*Note: If an **inspector** has reasonable grounds to believe that any method or practice of safeguarding or securing the critical infrastructure in question or any failure or refusal to comply with the Act, may negatively affect the physical security measures of that critical infrastructure, the inspector may, by written notice in the prescribed form and manner, order the person in control of that critical infrastructure to take, within a period specified in the notice, such steps in respect of the security of the critical infrastructure as may be specified in the notice.*

Further note: On good cause shown in an [application for declaration](#), or in a [SAPS National Commissioner application](#), the [Head of a Government department](#) may be made responsible for all or some of the expenses necessary to implement the steps.

(ii) As far as practically possible demarcate and place a notice, in the prescribed format and manner, on premises constituting a critical infrastructure, in order to notify persons that the premises are declared a critical infrastructure;

(iii) Comply with the [access to critical infrastructure requirements](#); and

Note: Such measures will not derogate from the [Trespass Act](#) provisions.

(iv) Take steps to ensure that such critical infrastructure is protected by the employees of that government department or organ of state, if the critical infrastructure is under the control of an [organ of state](#);

Note: If the organ of state is unable to protect a critical infrastructure, the person in control of that critical infrastructure must take steps to ensure that a [security service provider](#) (vetted by the State Security Agency) is appointed to protect the critical infrastructure.

Should the person in control of a critical infrastructure:

(i) [Not take the prescribed steps](#), the Minister may, by prescribed written notice, order him or her to take, within a period specified in the notice and at his or her own expense, such steps in respect of the security of the critical infrastructure as may be specified in the notice; and

(ii) Refuse or fails to take the steps specified in the notice within the period specified therein, the Minister must take or cause steps to be taken in respect of the security of that critical infrastructure and recover the reasonable cost thereof from that person to such extent as the Minister may determine.

Note: The [list of offences and penalties](#) includes, amongst others, offences for refusal or failure by a person in control of infrastructure to comply with an [inspector evaluation notice](#), an [inspector safeguarding notice](#), a [Minister notice](#), the duty to place a [critical infrastructure notice](#), and the duty to place an [access notice as directed by the security manager](#).

A person in control of a critical infrastructure must also appoint a person in the employ of the critical infrastructure (vetted by the State Security Agency) as security manager to:

(i) Implement and monitor, on behalf of the person in control of the critical infrastructure, the prescribed security policy and plan compiled for that critical infrastructure;

- (ii) Authorise access to critical infrastructure or oversee the authorisation of such access by security personnel working under his or her direction;
- (iii) Liaise with any [security service provider](#) appointed by the person in control of that critical infrastructure;
- (iv) Implement the directions contemplated in section 25(1)(b);
- (v) Provide monthly reports to the person in control of that critical infrastructure on the functions; and
- (vi) Perform such other functions related to the securing of that critical infrastructure as may be assigned to him or her by the person in control of that critical infrastructure.

A person to whom functions are assigned in terms of [chapter 4](#) must exercise such powers and perform such duties subject to the [Constitution](#) and with due regard to the fundamental rights (presumably the [Bill of Rights](#)) of every person.

It seems control is effectively given to the state security (including where the [Minister is given overriding discretion](#)) even if the person in control may have reasonable reasons for disagreeing with state security actions, with no option to appeal to court regarding merits.

Note: On a more positive note:

- Any [administrative process or decision](#) in terms of this law must be conducted or taken in accordance with the [Promotion of Administrative Justice Act](#), unless provided for in this Act; and
- Provision is made for an exception to offence of furnishing, disseminating or publishing in any manner whatsoever information relating to the security measures applicable at or in respect of a critical infrastructure, namely where this is done in accordance with the [Protected Disclosures Act](#), the [Prevention and Combating of Corrupt Activities Act](#) or any other Act of Parliament that provides for the lawful disclosure of information

General matters

- (i) A current area declared a national key point under the [National Key Points Act](#) will be deemed a declared critical infrastructure until reviewed;
- (ii) Liability for loss or damage is [limited](#);

Note: The limitation of liability should be read with, potentially and amongst others, the [State Liability Act](#) and the [Institution of Legal Proceedings against certain Organs of State Act](#);

(iii) Possibility of an additional [order relating to damages](#) - whenever a court convicts any person of an [offence](#) where damage to or loss of property related to a critical infrastructure was caused, the prosecutor must direct the attention of the person in control of that critical infrastructure to [section 300](#) of the Criminal Procedure Act and inform the court accordingly.;

(iv) There will be a [Council](#), a [National Commissioner](#), [inspectors](#), and [committees](#);

(v) [Regulations](#) may include prescribed safety steps, the role of security personnel and managers, and regulations relating to physical security measures; and

(v) Security services will be [exempt from the restrictions on entry](#).

Bill 22D of 2017



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Information

4. SMALL CLAIMS COURTS ACT: 1 APRIL 2019 THRESHOLD

From 1 April 2019 a small claims court will have jurisdiction in respect of [causes of action](#) in:

- (i) Actions for the delivery or transfer of any movable or immovable property, not exceeding R20 000 in value;
- (ii) Actions for ejectment against the occupier of any premises or land within the area of jurisdiction of the court - if the right of occupation is in dispute between the parties, then the court may hear the matter if that right does not exceed R20 000 in clear value to the occupier;
- (iii) Actions based on or arising out of a liquid document or a mortgage bond, where the claim does not exceed R20 000;
- (iv) Actions based on or arising out of a [credit agreement](#), where the claim or value of the property in dispute does not exceed R20 000;
- (v) Actions not mentioned above, where the claim or the value of the matter in dispute does not exceed R20 000; or
- (vi) Actions for counterclaims not exceeding R20 000, in respect of any cause of action mentioned above.

A small claims court will also have jurisdiction in matters in which is sought [specific performance](#) without an alternative claim for payment of damages, where this involves the rendering of an account in respect of which the claim does not exceed R20 000 or where this involves the delivery or transfer of any movable or immovable property not exceeding R20 000 in value.

Note that, [amongst others](#), specific provision is made for [matters beyond the jurisdiction of a small claims court](#), even where the value does not exceed the threshold amount.

Also note that provision is made for bring an amount within the threshold by allowing [abandonment of a part of a claim](#), or [deduction of admitted debt](#).

GN296 GG42282/5 March 2019

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Tax

5. VALUE-ADDED TAX ACT: 1 APRIL AMENDMENTS

Value-added Tax Act

Further reminder that amendments will be made 1 April 2019 to:

- (i) [Section 1](#) (enterprise includes intermediary, and intermediary defined as a person who facilitates the supply of electronic services supplied by the electronic services supplier and who is responsible for issuing the invoices and collecting payment for the supply);
- (ii) [Section 2](#) (inclusion of cryptocurrency activities in provision for financial services);
- (iii) [Section 22](#) (definition of face value introduced to provision for irrecoverable debts);
- (iv) [Section 23](#) (requirement for intermediary to register, in provision for registration of persons making supplies in the course of enterprises); and
- (v) [Section 54](#) (deeming provision relating to certain electronic services supplied by a vendor intermediary where the principal is not a resident or registered vendor).

Incorporated into the [Value-added Tax Act](#) and [Regulations](#).



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General

6. NOTABLE ONE LINERS

Auditing Profession Act

Information relating to the [registration of registered auditors and registered candidate auditors](#) has been gazetted.

Draft Feeds and Pet Food Bill

A correction notice to the [Draft Feeds and Pet Food Bill](#) indicates that the comment deadline is now 60 days from 4 March 2019.

Electoral Act

The Electoral Laws Amendment Act 2019 commenced 6 March 2019 and, [amongst others](#), prohibits the use of public funds for purpose of a political campaign (except funds allocated by [section 5](#) of the Public Funding of Represented Political Parties Act).

Note: The [Political Party Funding Act](#) will at some stage replace the [Public Funding of Represented Political Parties Act](#).

Electoral Commission Act

The Electoral Laws Amendment Act 2019 commenced 6 March 2019, and, [amongst others](#), clarified that the Commission may use all available sources of data to obtain information necessary to compile and maintain the national common voters roll.

Electronic Communications Act

Comment deadline extended to 29 March 2019 for the [inquiry into mobile broadband services](#) (meant to assess the state of competition and determine whether or not there are markets or segments within the value chain that may warrant section 67 regulation).

Fertilizers, Farm Feeds, Agricultural Remedies and Stock Remedies Act

Draft regulations regarding stock remedies (covering registration; labelling, containers and advertisement; product class and extra-label use; manufacturing establishments; sampling and permissible deviations; handling, storage and disposal; imports and appeals) have been gazetted. Comment deadline 8 weeks from 8 March 2019.

Films and Publications Act

Version D of the Films and Publications Amendment Bill 2015 has been published - please see the tracked changes in the [text of the Act](#), as well as the [past overview](#).

Liquor Products Act

The fees (code number registration and annual maintenance, import/removal/export certificate applications, lodging appeals, general liquor analysis fees etc) were amended on 8 March 2019.

Local Government Municipal Elections Act

The Electoral Laws Amendment Act 2019 commenced 6 March 2019 and, [amongst others](#), prohibits the use of public funds for the purpose of a political campaign (except funds allocated by [section 5](#) of the Public Funding of Represented Political Parties Act).

Note: The [Political Party Funding Act](#) will at some stage replace the [Public Funding of Represented Political Parties Act](#).

Local Government Municipal Systems Act

Reminder: CCT54/16 found the Amendment Act 7 of 2011 unconstitutional prospectively, with the declaration of invalidity suspended for 2 years to give the Legislature time to remedy the defect - the [Municipal Systems Amendment Bill 2019](#) is meant to remedy the defect.

Merchandise Marks Act

Restrictions on the use of the [National Research Foundation MZANSI for Science logo](#) have been gazetted.

Note: It is an [offence](#) to contravene an absolute/conditional prohibited use of a logo, figure, etc.

National Environmental Management: Integrated Coastal Management Act

- (i) [Coastal waters discharge permit regulations](#) gazetted - Any person who wishes to discharge effluent into coastal waters in circumstances that are not authorised under a [section 69 general discharge authorisation](#) must apply to the Department for a coastal waters discharge permit.
- (ii) The draft South African water quality guidelines for coastal marine waters - natural environment and mariculture use is available from the Department.

National Regulator for Compulsory Specifications Act

- (i) [Draft specification for the manufacture, production, processing and treatment of hermetically sealed \(canned\) meat products](#) (VC8019) gazetted. Comment deadline 2 months from 8 March 2019.
- (ii) Corrections have been made to VC8059 for [new pneumatic tyres for commercial vehicles and their trailers](#) as covered in SANS 20054, and to VC8056 for [new pneumatic tyres for passenger cars and their trailers](#) as covered in SANS 20030.

National Small Enterprise Act

It appears that amendments were made 15 March 2019 (even though the words proposed proclamation appears in the notice) to remove the term 'very small enterprise' in the [definition of small enterprise](#) (as the term is unhelpful and inconsistent with international practice), to increase the [schedule threshold values](#) (to account for inflation), and to use only 'total fulltime equivalent of paid employees' and 'total annual turnover' '[proxies](#)'.

Note: The thresholds will influence the future Competition Act [definitions of small and medium business regulations](#).

Scientific institution Acts

The Science and Technology Laws Amendment Act Bill 2018 (version B) proposes making internal governance amendments to the [Scientific Research Council Act](#), the [Academy of Science of South Africa Act](#), the [Human Sciences Research Council Act](#), the [Technology Innovation Agency Act](#), and the [South African National Space Agency Act](#).

Standards Act

New, proposed, amended, and withdrawn [standards](#) have been gazetted for 15 March 2019.

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

Superior Courts Act

- (i) The Courts of Law Amendment Act amended the Act on 11 March 2019 to allow for [rescission of judgment](#) if a plaintiff in whose favour a default judgment has been granted has consented in writing that the judgment be rescinded, or where judgement debt, judgment interest and costs have been settled.
- (ii) Reminder that [Rule 31](#) (Judgment of confession and by default and rescission of judgments) was amended as from 11 March 2019, and application for rescission of judgment forms were introduced.

Traditional Courts Bill

The Bill proposes, [amongst others](#), prohibited conduct that must be [regularly reviewed](#) (with some [examples given](#)) and that a traditional court may only hear and determine a [traditional court matter](#) (including key family and property issues such as advice relating to customary law practices in respect of custody and guardianship of minor or dependent children, and succession and inheritance).

Note: Provision is made for [reviews by the High Court](#), [referral of matters to a magistrates court](#), and [transfer of disputes](#) to a magistrates court or small claims court.



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Kind regards,

SAIPA Technical and Standards Department



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