

FEDHASA LEGISLATION REPORT & UPDATE

FEBRUARY / MARCH 2008

NATIONAL GOVERNMENT

DEPARTMENT OF COMMUNICATIONS

Film & Publications Act & Regulations

A portion of the amended Act and Regulations apply to the registration requirements for all internet service providers. An Internet Service Provider is, for the purpose of the Act, any person offering access to the Internet. Such persons must register with the Board and take all reasonable steps to prevent, amongst others, access to child pornography by any person using such services.

Registration will apply to all hotels and accommodation establishments that provide an internet service to their clients. There is a single, once off, registration fee of R825.00 and no annual renewal requirement.

Application form FPB/ISP/27A can be obtained at http://www.fpb.gov.za/home_page.asp or contact Daniel on 011 – 4830971 and he will forward the registration form to you by email.

Films and Publications Act: Regulations: Films, publications and internet (Gazette 28535, Regulation Gazette 8407), 20 February 2006

Link - <http://www.info.gov.za/gazette/regulation/2006/28535.pdf>

Copy Right Act / Performance Protection Act & Regulations

Although owners and performers have been entitled to be paid by broadcasters and other users for the commercial use of their sound recordings since June 2002, there has been a long delay in implementing these rights by owners of sound recordings. The South African Music Performance Rights Association (SAMPRO) has now published a notice to inform all broadcasters, and all other commercial businesses that use recorded music through any form of broadcasting or through a diffusion service or through communicating sound recordings to the public or to their customers, that they are obliged in terms of this legislation to pay a royalty for all such usage to the owner of each such sound recording since June 2002 – and that SAMPRO has commenced issuing licences and collecting royalties on behalf of its members. (Not the same as the SAMRO registration and fees) The copyright owner of the music sound recording, as defined in this legislation, is the person who invested in making the sound recording, being the record company or record label. Registration information and fees can be obtained on their website at www.sampra.org.za. SAMRO, The South African Music Rights Organisation, have said that they have also made application for accreditation with CIPRO in terms of the Copy Right Act / Performance Protection Act & Regulations.

DEPARTMENT OF HEALTH

Tobacco Control Amendment Bill

Section 75 of the Bill dealing with smoking in public places was signed by the President on 23 Feb 2008. It was published on 28 Feb 2008 but for information purposes only – it will only enter into force at a date yet to be set by the President. Section 76 of the Bill has not as yet been completed. It is more than likely that both sections will be published simultaneously.

Link - <http://www.fedhasa.co.za/pages/Content.asp?SectionID=23>

Under Department of Health - Bills

Or - <http://www.info.gov.za/gazette/acts/2007/a23-07.pdf>

DEPARTMENT OF LABOUR

Basic Conditions threshold increased

Basic Conditions of Employment Act, 1997 - Determination: Earnings Threshold.

All employees earning in excess of R149 736 per annum are excluded from sections 9, 10, 11, 12, 15, 17(2), 18(3) of the Act with effect from 1 March 2008.

Excluded provisions cover -

- 9. Ordinary hours of work
- 10. Overtime
- 11. Compressed working week
- 12. Averaging of hours of work
- 15. Daily and weekly rest period
- 17. Night work (only provision 17.2)
- 18. Public holidays (only provision 18.3)

Link – <http://www.fedhasa.co.za/pages/Content.asp?SectionID=23>

Under Department of Labour - Notices

Unemployment Insurance Contributions Act

Determination of limit on amount of remuneration for purposes of determination of contribution in terms of Section 6 of the unemployment insurance Contributions Act No4 of 2002. (Gazette 30715, General Notice 99). Section 6(1) of that Act shall, with effect from 1 February 2008, not apply to so much of the remuneration paid or payable by an employer to an employee during any month, as exceeds R12 478,00.

Link - http://www.info.gov.za/gazette/notices/2008/30715_99.pdf

Compensation for Occupational Injuries and Diseases Act

Amendment to Regulations (Gazette 30646, Notice 16), 11 January 2008

Amends, amongst others, the definition of "earnings"

Link - <http://www.info.gov.za/gazette/notices/2008/30646a.pdf>

DEPARTMENT OF MINERALS AND ENERGY

Energy Security Bill

Importing and using power-guzzling appliances could be banned under a law designed to enforce the government's energy conservation programme. As well as powers to ban appliances, the proposed Energy Security Bill will empower the minerals and energy minister to penalise offenders and issue standards and regulations for appliances and equipment used to generate or consume energy. The submission of energy consumption data will be made compulsory to help with planning and co-operation in the development of sector plans to be made mandatory to ensure integrated energy planning. The Bill could be ready for submission to the cabinet before the end of March.

Electricity draft regulation act for comment, 2006

Electricity regulations for the prohibition of certain practices in the electricity supply and compulsory norms and standards for reticulation services. Makes reference to water heating in commercial buildings including hotels.

Link - http://www.dme.gov.za/pdfs/energy/regu_prohibited.pdf

Notes on the above

Link -

<http://www.dme.gov.za/pdfs/energy/Background%20electr%20em%20plan%20jan%202008.doc>

SOUTH AFRICAN REVENUE SERVICES – SARS

VAT registration simplified

The South African Revenue Service has introduced a simplified and streamlined VAT registration process which came into effect on the 1st February. The new VAT registration significantly reduces the paperwork required for registration and provides for the instant issuing of VAT registration numbers over the counter at SARS branches. The new application form has been reduced from a seven page document to four pages, with a reduction in the number of supporting documents accompanying the registration form from a previous maximum of 12 to only two key documents - copy of ID and proof of banking details.

SARS extends e-filing for companies

Companies and close corporations submitting tax returns electronically have been granted an extension by the South African Revenue Service and will be able to file their returns within 15 months of the financial year-end. However, only companies and close corporations using a tax practitioner registered with the SARS would be able to take advantage of the extension.

SARS Notice

Fixing of rate per kilometre in respect of motor vehicles for the purposes of section 8(1)(b)(ii) and (iii) of the Income Tax Act, 1962: (GG 30796 – 22 February 2008)

Link -

<http://www.sars.gov.za/legislation/Regulations%20and%20Government%20Notices/GG/GG%2030796.pdf>

SARS Notice

Determination of the daily allowance in respect of meals and incidental costs for the purposes of section 8(1) of the Income Tax Act, 1962: (GG 30795 – 22 February 2008)

Link -

<http://www.sars.gov.za/legislation/Regulations%20and%20Government%20Notices/GG/GG%2030795.pdf>

SARS Notice

Determination of interest rate for purposes of paragraph (a) of the definition of "official rate of interest" in paragraph 1 of the Seventh Schedule to Income Tax Act, 1962: (GG 30794 – 22 February 2008)

Link -

<http://www.sars.gov.za/legislation/Regulations%20and%20Government%20Notices/GG/GG%2030%20794.pdf>

SARS Notice

Draft regulations for comment—conditions for approval by the Commissioner of an entity for purposes of section 10 (1) (d) (iii) and (iv) of the Income Tax Act, 1962

Link - <http://www.sars.gov.za/legislation/Policy/2008/GG%2030793.pdf>

Both the draft Taxation Laws Amendment Bill 2008 and the Taxation Laws Second Amendment Bill 2008, which will give effect to the tax proposals contained in this year's budget speech, have been placed in the public domain for comment. Once public comment has been considered, the final bills will be officially tabled by the Minister of Finance before the Finance Committee. The Revenue Laws Amendment Bills 2008, to be tabled later this year, will conclude the process. Affected legislation will be the Income Tax Act 1962, the Customs and Excise Act 1964, the Value-Added Tax 1991, the Collective Investments Schemes Control Act 2002, the Revenue Laws Amendment Act 2006, the Securities Transfer Tax Administration Act 2007 and the Revenue Laws Amendment Act 2007.

Revenue Laws Amendment Bills, 2007

and related explanatory memorandum, both of which are available on the SARS website (www.sars.gov.za) under Legislation/Bills and Explanatory Memoranda. The Revenue Laws Amendment Bills will give effect to the tax proposals presented by the Minister of Finance in the 2008 National Budget as tabled in Parliament. This set of Bills deals with the rates, thresholds, urgent policy and administrative matters as well as technical corrections. The more complex policy proposals announced will be addressed in the Revenue Laws Amendment Bills after further consultation.

Taxation Laws Amendment Bills, 2008

The Minister of Finance has released the draft Taxation Laws Amendment Bills 2008 for public comment. The draft Bills may be obtained from the National Treasury (www.treasury.gov.za) or SARS (www.sars.gov.za) web sites. Taxation Laws Amendment Bills, 2008: Company Restructuring Measures 21 February 2008. The purpose of this release is to highlight certain matters relating to company restructurings that require attention. The first portion of this media release describes the legislative remedy for certain uncertainties in respect of intra-group rollover relief arising from the Revenue Laws Amendment Act, 2007. These changes further close loopholes in respect of this relief. The second portion of this media release describes the closure of loopholes relating to cross-border exemptions.

Link -

<http://www.sars.gov.za/legislation/Policy/2008/TLAB%202008%20%20Media%20Statement%20Company%20Restructuring.pdf>

DEPARTMENT OF TRADE & INDUSTRIES

Tourism BEE Charter & Scorecard

Amended charter and scorecard currently with DTI for approval. It is probable that the scorecard has been aligned with the BBBEE code providing for an exemption for SMEs under R5 mill turnover and qualifying businesses between 5 and 35 mill only having to meet 4 criteria. They are hoping to relaunch at Indaba

BEE deadline extension

Minister of trade & industry has by government notice extended last year's 12-month deadline given to SA business to align and standardise its BEE practices with government's B-BBEE Codes of Practice. The extension is for a further six months. The original gazetted notice gave 9 February 2008 as the deadline. The purpose of the extension of the transitional period by the DTI is a further opportunity window for the entire market "to convert from a narrow-based to a broader-based BEE approach."

Corporate laws to facilitate BEE funding

Far-reaching reforms to South Africa's company laws will facilitate black empowerment deals by freeing up funding and making them far less complicated to structure. Companies will now be allowed to provide financial assistance for the purchase of their own shares, or for shares in their holding companies, provided certain requirements under the Corporate Laws Amendment Act are met. Key changes of the Corporate Laws Amendment Act include that - Disposals of all assets of a company will now require shareholder approval by special resolution whereas previously an ordinary resolution sufficed; and - Companies will be categorised as "widely held" or "limited interest" companies.

BEE self assessment for SME's to go

Small and medium-sized enterprises (SMEs) will have to be verified by accredited empowerment rating agencies from 2008 in order to qualify for black economic empowerment (BEE) scorecards. Under the new policy, it will no longer be acceptable for businesses with annual turnover of R5 million or more to conduct self-assessment to determine their BEE credentials.

New Companies watchdog planned

Plans are afoot for a new financial reporting investigations panel, armed with powers wider than those of any other regulatory financial body worldwide, to scrutinise company announcements, including financial statements. Companies will now need to review their financial practices to avoid penalties for issuing misleading financial information. Publishing incorrect or misleading financial information could lead to fines up to R1m. Transgressors can for the first time expect to be named and shamed.

The Corporate Laws Amendment Act, which became law on December 14, gives the new panel wider power of investigation - including subpoena and investigation - than the Gaap panel. Altogether six JSE-listed companies were referred to the Gaap Monitoring Panel last year. Five had to republish their financial results, and one had to correct disclosure in subsequent annual financial statements. The six brought to 34 the number of companies referred since the panel was launched in 2002. Weiner identified themes common to most cases as erroneous accounting for acquisitions and lack of appreciation of the disclosure requirements of international financial reporting standards.

The International Accounting Standards Board

The International Accounting Standards Board recently announced new accounting requirements for business combinations and transactions with non controlling interests (formerly "minority interests"). The revisions were expected to have far-reaching consequences for companies. Although the changes do not come into effect until July 1 next year, any transactions negotiated prior to this date need to be carefully evaluated, particularly if they are not expected to be completed until after that date. Having a clear understanding of the new requirements before entering into a business acquisition will be essential as it is likely that changes will also be needed to debt covenants, management remuneration and other performance measures in place. The full article can be viewed at <http://www.businessday.co.za/articles/companies.aspx?ID=BD4A718607>

Protected 2010 terms

The Department of Trade and Industry has granted the media fair use of terms related to the 2010 FIFA World Cup, which are now protected by intellectual property rights. Entitled "Prohibition on the use of certain words and emblems for the 2010 FIFA World Cup South Africa," the legally binding notice falls under the Merchandise Marks Act of 1941. "The prohibition only applies to activities connected to the 2010 FIFA World Cup South Africa in the area of Football or Soccer 2010 FIFA World Cup." Prohibitions also pertain to the African Confederations Cup in 2009, which is another FIFA owned event. These prohibitions are not permanent and will expire six months after the last game of the 2010 tournament.

Companies Bill

Tabling hoped for in first session 2008, with promulgation by year-end, all leading to a new Companies Act by New Year 2010.

Consumer Protection Bill

A new regulatory framework to protect consumers and repealing the Consumer Affairs (Unfair Business Practices) Act "to promote a fair and sustainable market place for consumer products and services". SLA still assisting department although minister hopes for tabling early in 2008.

National Gambling Amendment Bill [B31B-2007]

Interactive, or online, gambling is currently prohibited in South Africa in terms of the principal act, the National Gambling Act No. 2 of 2004. This bill seeks to allow for the "effective regulation of interactive" gambling in its generally accepted form of remote gambling, which can take place on the internet or "other related forms of telecommunication. The proposals in terms of this bill are that online players, whatever their location within South Africa or outside its borders, have first to register and obtain a facility to gamble on the particular system. The bill was approved at NA level and now goes before the NCOP.

Link - <http://www.info.gov.za/gazette/bills/2007/b31b-07.pdf>

DEPARTMENT OF ENVIRONMENTAL AFFAIRS & TOURISM

National Environmental Management: Waste Bill No 39 - 2007

The subjects covered by this bill are wide and diversified. They include, for example, storage, collection, transportation, treatment, re-use and recycling, processing, disposal of waste and matters related to contamination, licensing and penalties. The DEAT has briefed the NA committee and parliamentary hearings have taken place.

PROVINCIAL GOVERNMENT

LIMPOPO

Limpopo Liquor Bill published for comment

The Limpopo Draft Liquor Bill 2007, which will be published and advertised shortly for public comment, has been added to the Fedhasa website. The Department will be advertising requests for comment from the 29th February 2008. The public will be given 21 days in which to make submission. Readers wishing to access the Bill should go to www.fedhasa.co.za - click on legislation (top of page) click on Government Documents - page down to the bottom of the page and look for Provincial Government - Limpopo and click on Limpopo Liquor Bill 2007 (opens with Microsoft Office)

GAUTENG

Gauteng Liquor Act

The new Gauteng Liquor Act to regulate the trade in alcohol could entail details on the times and days when liquor can be sold. Finance and economic affairs department spokesman Percy Mthimkhulu said that members of the public, stakeholders in the liquor industry and political parties, including the ANC Youth League, would get an opportunity to make submissions. "Before the end of this year the new Act, which will regulate the industry, will be in place. The Act will have all sorts of details about trading. "The date will be set soon for written submissions which will inform the Act," said Mthimkhulu.

NORTHERN CAPE

Liquor Bill

The draft Bill is currently under discussion with DTI. Should be lodged with the Provincial Portfolio committee early March.

NORTH WEST

Draft Liquor Policy

Having difficulty getting Premier to review the Draft Liquor Policy. No time lines drawn up as yet and no Draft Bill or Regulations drawn up.

WESTERN CAPE

Draft Liquor Bill

The Bill has been finalized and should be published for comment on Friday 14th March. Stakeholders and interested parties will be given a period of 21 days in which to make comment. As soon as the Draft Bill is available it will be posted on the Fedhasa website and Western Cape Fedhasa members will be asked to make comment.

MPUMALANGA

Liquor Act & Regulations

As reported previously the Provincial Liquor Act was approved in May 2007. The Regulations have been completed and are currently with the Provincial Cabinet awaiting approval. They are hoping to have both the Act and Regulations in place by the end of April this year.

KWA-ZULU NATAL

Liquor Bill & Regulations

The draft Bill has been completed and is currently with the Provincial Cabinet for approval. No publication time table has yet been agreed. It is envisaged that the Bill will be published for public comment by the portfolio committee. No work has yet commenced on the Regulations.

FREE STATE

Liquor Bill & Regulations

As reported previously the Act has been passed. The draft Regulations are complete and the Department is currently consulting with the various Municipalities with regards the application process and the trading hours. They are hoping to gazette the Regulations by the end of April 2008.

LOCAL GOVERNMENT

DURBAN

Durban property valuation

Notice is hereby given in terms of Section 49(1)(a)(i) and 78(2) of the Local Government Municipal Property Rates Act, of 2004 (Act No. 6 of 2004), hereinafter referred to as the "Act", that the valuation roll for the financial year 1 July 2008 to 30 June 2009 is open for public inspection at the office of the Municipal Manager, Valuation Roll, 13th Floor, 75 Winder Street, Durban and Regional Centres during office hours 07:30 to 16:00, Mondays to Fridays from 13 February 2008 to 31 March 2008. In addition the valuation roll is available at **website www.durban.gov.za**.

CAPE TOWN

Comment on Cape land scheme

Cape residents are invited to comment on the city's final draft of its Integrated Zoning Scheme (IZS), which is aimed at controlling land use and property development within the municipality. The IZS Steering Committee will review all comments. The final draft will then

be submitted to PEPCO for consideration and to the Provincial Minister of Planning for approval. Comments can be provided in writing until 16 April 2008 to the Project Manager, IZS Operational Office, 16th floor Tower Block, P O Box 298, Cape Town or e-mailed to lums@capetown.gov.za. The IZS can also be viewed on the City of Cape Town website www.capetown.gov.za.

JOHANNESBURG

Draft rates policy by-laws

Joburg residents are encouraged to comment on the draft rates policy by-laws. Written comments can be addressed to the Director: Legal & Compliance, PO Box 1049, Johannesburg 2000 or 2nd Floor, City Manager's Office, Council Chamber Wing, Civic Centre, Loveday Street, Braamfontein. E-mails can be sent to NicoleD@joburg.org.za or Melissav@joburg.org.za. The deadline for comments is Monday, 24 March 2008.

Link - http://www.joburg-archive.co.za/2008/pdfs/rates_policy_bylaws21022008.pdf

Water Services By-laws

The Council hereby gives notice that it intends to amend the Water Services By-laws of the Municipality. The purpose of the amendment is to provide that without prior approval of the Council no person shall install, supply or use garbage grinders for the disposal of waste at domestic dwellings, restaurants, hostels and commercial kitchens, and matters relating thereto.

Link - http://www.joburg-archive.co.za/2008/pdfs/water_services_amendment.pdf