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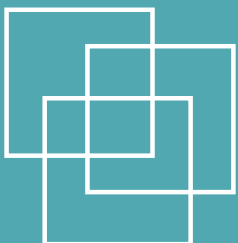
the department of economic
development, tourism and
environmental affairs
FREE STATE PROVINCE



International
Labour
Organization

South Africa SME Observatory

Stock-take of South African and
Free State specific policies,
laws and regulations with a
direct bearing on SME
development



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URBAN-ECON
Development Economists

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List of Acronyms

B-BBEE –Broad Based Black Economic Empowerment
 BUSA –Business Unity South Africa
 CAFCOM –Consumer Affairs Committee
 CC – Closed Corporation
 CCMA - the Commission for Conciliation, Mediation and Arbitration
 CGT –Capital Gains tax
 CIDB – Construction Industry Development Board
 CIPC –Companies and Intellectual Property Commission
 COIDA -Compensation for Occupational Injuries and Diseases Act
 Cosatu - Congress of South African Trade Unions
 CPA –Consumer Protection Act
 DEAT –Department of Environmental Affairs and Tourism
 dti –Department of Trade and Industry
 EME – Exempt Micro Enterprise
 FBO –Faith based Organisation
 Fedusa -Federation of Unions in South Africa
 FGASA – Field Guides Association of Southern Africa
 FICA -Financial Intelligence Centre Act
 HRC –Human Rights Commission
 IDC – Industrial Development Corporation
 Mol – Memorandum of Incorporation
 Nactu -National Council of Trade Unions
 NEDLAC - National Economic Development and Labour Council
 NEF – National Empowerment Fund
 NGO- Non Governmental Organisation
 NHBRC -National Home Builders Registration Council
 NMISA – National Metrology Institute of South Africa
 NPO – Non Profit Organisation
 NRCS –National regulator for Compulsory Specifications
 NSBO –National Small Business Office
 OHSA –Occupational Health and Safety Act
 PAYE –Pay As You Earn
 PrDP –Professional Driving Permit
 QSE – Qualifying Small Enterprise

SABS –South African Bureau of Standards
SACU –Southern African Customs Union
SANAS –South African National Accreditation System
SARS –South African Revenue Service
SATSA -Southern Africa Tourism Services Association
SDL – Skills development Levy
SEDA – Small Enterprise Development Agency
SETA –Sector Education Training Authority
STC –Secondary tax on Companies
TBSA -Tourism Business Council of South Africa
TGSA -Tourism Grading Council of South Africa
UIF –Unemployment Insurance Fund
VA- Voluntary Associations
VAT –Value Added Tax

Executive Summary

1. Introduction

The Free State SME Development Initiative is a partnership between the Free State Department of Economic Development, Tourism and Environmental Affairs (Detea), the International Labour Organisation (ILO), and Flanders International Cooperation Agency (FICA). The goals of the Free State SME Development Initiative are to promote employment creation through Small and Medium Enterprise (SME) Development. An important goal of the project is to contribute to the creation of a more conducive policy, legal and regulatory framework for the start-up and operations of SME in the Free State Province.

2. Purpose

The purpose of this study is to produce a simple Stock-take of South African and Free State specific policies, laws and regulations with a direct bearing on SME development and make this available to potential, emerging and established entrepreneurs in order to clarify some of the questions entrepreneurs may have with regards to the policy, legal and regulatory requirements for the sector they operate in and the type of business they run. The report does not touch conclusively on laws and regulations regarding SME development, but aims to address the most important ones. Neither does it attempt to make any conclusions with regards to level of compliance and compliances costs for SMEs, although the concluding remarks point to recommendations as well. The Free State SME Development Initiative is carrying out a more detailed enterprise survey of Free State SMEs compliance costs. The reader should also bear in mind that policies, laws and regulations change often so by the time of reading some of the information in this stock take may already be out of date. The stock-take has been prepared by Urban Econ together with the ILO through the Free State SME Development Initiative.

3. Regulatory framework

Various legislative and regulatory policies exist which are mandatory for the application, registration and implementation process of creating a small business. These different statutory requirements regulate the operation and standardisation of the SME environment of South Africa.

4. Review of Key Business and Commerce Legislation

Depending on the size of the company being registered, various regulations may become applicable (especially with regards to the South African Revenue Service and the Department of Labour). Local and Metropolitan Municipalities also proclaim their own by-laws that may apply to SMEs.

4.1. The Companies Act of South Africa (2008)

The Companies Act (2008) provides the regulatory framework for registering a business in South Africa. The main institution involved in the process is the Companies and Intellectual Property Commission (CIPC) which merged the previous *Office of Companies and Intellectual Property Enforcement (OCIPE)* & the *Companies and Intellectual Property Registration Office (CIPRO)*.

4.2. The Bills of Exchange Act (1964)

The Bills of Exchange Act 34 of 1964 as amended by Act 56 of 2000, forms the foundation of commercial law in South Africa and is directly applicable to the way in which SMEs conduct business. The Act deals directly with promissory notes, cheques and bills of exchange to consolidate all legislation relating to the aforementioned three entities. It was the first South African legislation on negotiable instruments. The amendment to the Act mainly relates to the following:

- In essence, the act is an English one, therefore the introduction of an English statute into a civil law background;
- Technological advances in banking;
- The intentional negligence of banks in the collection of cheques
- The institutionalisation and regulation of non-transferrable cheques.

4.3. The Income Tax Act (1962)

This Act was written to consolidate the law relating to the taxation of incomes and donations, to provide for the recovery of taxes on persons, to provide for the deduction by employers of amounts from the remuneration of employees in respect of certain tax liabilities of employees, and to provide for the making of provisional tax payments and for the payment into the National Revenue Fund of portions of the normal tax and interest and other charges in respect of such taxes, and to provide for related matters.

4.4. The Value Added Tax Act (1991)

The Value Added Tax Act, 1991, stipulates that Value Added Tax or VAT is an indirect tax based on consumption in the economy. Revenue is raised for the government by requiring certain traders (vendors) to register and to charge VAT on taxable supplies of goods or services. Vendors act as the agent of the government in collecting the VAT charged on taxable transactions. SARS is a government agency which administers the VAT Act and ensures that the tax is collected and that the tax law is properly enforced.

4.5. Small Business Tax Amnesty and Amendment of Taxation Laws Act (2006)

The Small Business Tax Amnesty and Amendment of Taxation Laws Bill, 2006, introduces a tax amnesty for small business and introduces amendments to the Transfer Duty Act, 1949, the Estate Duty Act, 1955, the Income Tax Act, 1962, the Customs and Excise Act, 1964, the Stamp Duties Act, 1968, the Value-Added Tax Act, 1991, the Tax on Retirement Funds Act, 1996, the Uncertificated Securities Tax Act, 1998, and the Local Government: Municipal Structures Act, 1998.

4.6. The Broad based Black Economic Empowerment Act (2003)

The B-BBEE Act of 2003 was established as a legislative framework for the promotion of black economic empowerment, to empower the Minister to issue codes of good practice and to publish transformation charters, as well as to establish the Black Economic Empowerment Advisory Council and to provide for matters connected therewith.

4.7. Competition Act (As Amended by the Competition 2nd Amendment Act)

The purpose of this Act is to promote and maintain competition in South Africa.

4.8. The Labour Relations Act (1995)

This Act regulates the organisational rights of trade unions and promotes and facilitates collective bargaining at the workplace and at sectoral level. It also deals with strikes and lockouts, workplace forums and alternative dispute resolution. It also establishes the CCMA, Labour Court and Labour Appeal Court as superior courts, with exclusive jurisdiction to decide matters arising from the Act.

4.9. Consumer Protection Act (2008)

The Consumer Affairs (Unfair Business Practices) Amended Act no 21, 2001 was established in order to provide for the prohibition or control of certain business practices and for matters connected therewith. The Act was repealed in terms of section 121 of the Consumer Protection Act, 2008. The Act came into effect on 31 March 2011. It sets out the minimum requirements to ensure adequate consumer protection in South Africa. This Act constitutes an overarching framework for consumer protection, and all other laws which provides for consumer protection (usually within a particular sector) will need to be read with this Act to ensure a common standard of protection.

4.10. The Unemployment Insurance Contributions Act (2002)

The unemployment insurance fund contributions (UIF contributions) insure employees against the loss of earnings due to termination of employment, illness and maternity leave. In terms of the Unemployment Insurance Contributions Act, No 4 of 2002, both the employer and the employee have to make a contribution to the Unemployment Insurance Fund. The contributions made by each

of them are calculated as 1% of the gross remuneration (before the deduction of pension fund, retirement fund and qualifying medical aid contributions) paid or payable by the employer to the employee for services rendered.

4.11. Occupational Health and Safety Act (1993)

The aim of this 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.

4.12. Businesses Act (1991)

The Business Act 71 of 1991, as amended in the Government Gazette 15374, to be known as the Businesses Amendment Act 186 of 1993, has the responsibility of regulating the licensing of certain business entities. It also aims to empower local authorities to implement by-laws regarding the conducting of business by such entities as street vendors, pedlars or hawkers.

4.13. National Development Agency Act

The National Development Agency (NDA) is a public entity listed under schedule 3A of the Public Finance Management Act (PFMA) it reports to the Parliament of the Republic of South Africa through the Minister for Social Development and is mandated to carry out the following: which was established by the National Development Agency Act (Act No. 108 of 1998) in November 1998.

The purpose of the NDA is too contribute towards the eradication of poverty and its causes by granting funds to civil society organisations for the purposes of:

- Implementing development projects for poor communities; and
- Strengthening the institutional capacity of other civil society organisations that provide services to poor communities.

Furthermore, the NDA aims to promote consultation, dialogue and sharing of development experience between civil society organisations and relevant organs of state, debate development policy and to undertake research and publications aimed at providing the basis for development policy.

The vision of the NDA is to develop a society free from poverty and its mission is to contribute to poverty eradication and the elimination of its causes.

5. Review of Key Business and Commerce Institutions

The new Companies Act of 2008 saw a complete overhaul of the law with regards to companies and their registration. The major institutions which regulate the registration of companies as well as the compliance and regulations to which SMEs must adhere to are discussed in this section. These relate primarily to the formation of companies, the adherence to labour law, stipulations with regards to standards, health and safety, taxation, as well as the regulations relating to industry-specific SMEs.

5.1. The Companies and Intellectual Property Commission

The most important regulatory structure that any new business will deal with is the Companies and Intellectual Property Commission (CIPC), which is a member of the dti.

The CIPC was established through the consolidation of the Office of Companies and Intellectual Property Enforcement (OCIPE) and the Companies and Intellectual Property Registration Office (CIPRO). The Commission has independent right of existence under the law and (as authorised by the Companies Act, 2008 (Act 71 of 2008)) has jurisdiction throughout South Africa. The CIPC is independent, subject only to the Constitution and the law or any policy statement issued by the Minister of Trade and Industry in terms of this Act. The CIPC Commission is impartial and performs its functions without prejudice.

The Commission's Strategy aims to proclaim the Commission as a "credible, independent and transparent regulator, on par with the best in the world." The core functions of the Commission are the following:

- Registration of Companies, Co-operatives and Intellectual Property Rights (trademarks, patents, designs and copyright) and maintenance thereof;
- Disclosure of Information on its business registers;
- Promotion of education and awareness of Company and Intellectual Property Law;
- Promotion of compliance with relevant legislation;
- Efficient and effective enforcement of relevant legislation;
- Monitoring compliance with and contraventions of financial reporting standards, and making recommendations thereto to Financial Reporting Standards Council (FRSC);
- Licensing of Business rescue practitioners;
- Report, research and advising the Minister on matters of national policy relating to company and intellectual property law.

5.2. The South African Revenue Service (SARS)

A salient step for any SME registering as a new business entity is to register for the various applicable taxes with SARS, either as an individual or as a company. Firstly, a business must be issued with an income tax reference number. It is mandatory to register within 60 days of starting a business by completing a IT77 form, either at a SARS office or online. The National Small Business Office (NSBO) in SARS is the custodian of all small business tax and customs policy matters within SARS. The office exists to maximise compliance among small businesses while at the same time finding ways to reduce the compliance burden faced by these businesses in South Africa.

5.3. The Department of Labour

5.3.1. Compensation for Occupational Injuries and Diseases

All companies and sole proprietorships that have one or more full-time employees must register with the Department of Labour. This is mandatory in terms of the Compensation for Occupational Injuries and Diseases Act (COIDA). The Act replaced the previous Workmen's Compensation Act in 1993, and provides for employees who are injured or killed at work, or who contract a disease directly as a result of their work. It also protects employers from personal liability in these instances. It is the duty of the Compensation Commissioner to meet the cost of medical treatment for employees injured on duty. It also assists employers to continue paying the wages of the injured employee. It is not a tax, but is obligatory for all employers. From April every year, the Compensation Fund sends employers notices of assessments informing them of the amounts due. This is done throughout the year, and it is not possible to predict when employers will receive their notices.

5.3.2. Employment Equity

The Labour department also regulates employment equity. In order to comply with Section 21 of the Employment Equity Act 55 of 1998, employers are required to submit their Employment Equity Reports. The Employment Equity Act applies to all employers, workers and job applicants and protects workers and job seekers from unfair discrimination, while also providing a framework for implementing affirmative action.

5.3.3. Retention of employee records

Employers must maintain a record of certain information for each worker. These records must be kept for 3 years after termination. The Basic Conditions of Employment Act applies to all employers and workers, regulates leave, working hours, employment contracts, deductions, pay slips and termination.

5.3.4. Employers' Duties with regards to Trade Unions

Strong trade unions are necessary for effective collective bargaining - an important way of regulating industrial relations and of determining workers' wages and benefits. Trade unions do not have to be registered with the Department of Labour, but registered unions have additional rights.

5.4. The National Economic Development and Labour Council

The National Economic Development and Labour Council Act (No. 35 of 1994) provides for the establishment of a national economic, development and labour council, namely Nedlac. The Council is governed by an Executive Council, a Management Committee, and consists of four Chambers namely;

- Public Finance and Monetary Policy Chamber;
- Trade and Industry Chamber;
- Labour Market Chamber; and
- Development Chamber.

5.5. South African Bureau of Standards

The **South African Bureau of Standards (SABS)** is a South African statutory body that was established in terms of the Standards Act, 1945 (Act No. 24 of 1945) and continues to operate in terms of the latest edition of the Standards Act, 2008 (Act No. 29 of 2008) as the national institution for the promotion and maintenance of standardisation and quality in connection with commodities and the rendering of services. As the national standardisation authority, the SABS is responsible for maintaining South Africa's database of more than 6,500 national standards, as well as developing new standards and revising, amending or withdrawing existing standards as required.

5.6. The National Regulator for Compulsory Specifications (NRCS)

The new NRCS Regulations were promulgated by the Minister of Trade and Industry, Dr Rob Davies and came into effect on 1 January 2011. The purpose of the Regulations is to ensure the effective implementation of the NRCS Act. According to the Regulations, all entities manufacturing and importing goods or providing services regulated by the NRCS are requested to register and be issued with the registration certificate.

5.7. Customs and Excise

All importers and exporters in South Africa are required to register with the Commissioner of the South African Revenue Service (SARS). Form DA185 for importers and exporters, as well as clearing agents and warehouse licensees, must be completed and submitted to SARS. Companies registered

with SARS will need to renew their registration every three years as per the amended Customs Act 91 of 1964.

5.8. The Department of Health

The Department of Health is mandated to oversee the health and safety of all citizens in South Africa. In this regard, it is assisted by various acts and legislation pertaining to workplace health and safety. The aim of these regulations is to ensure all employers 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, as per the Occupation health and Safety Act no 85 of 1993.

5.9. The Department of Tourism

The Tourism Industry falls under the Department of Tourism that administers all aspects relating to hospitality, accommodation and travel. The sector is divided into three main categories:

- 1) **Accommodation**
 - hotels
 - resort properties and timeshare
 - bed and breakfasts
 - guesthouses
 - game lodges
 - backpackers and hostels
- 2) **Hospitality and Related Services**
 - restaurants (not attached to hotels)
 - conference venues (not attached to hotels)
 - professional catering
 - attractions
 - consulting and professional services companies
- 3) **Travel Distribution Systems**
 - tour wholesalers
 - tour operators
 - travel agents
 - tourist guides
 - car rental companies

- coach operators

5.10. National Home Builders Registration Council

By law, all home builders have to be registered with the council, and have to comply with its building quality standards. There is also a warranty scheme in place, which covers "major structural defects" caused by poor workmanship. Noncompliance and deviation from plans and specifications is also covered. The main Law that governs the NHBRC is the Housing Consumer Protection Measures Act 1998, (No.95 of 1998) as amended and its commensurate promulgated regulations.

5.11. Engineering Council of South Africa

The Engineering Profession Act, 2000, (No. 46 of 2000) as well as other Acts provide for the reservation of work of an engineering nature for the exclusive performance by registered persons.

5.12. Bargaining Councils

Trade unions and employers' organisations may form bargaining councils. Bargaining councils deal with collective agreements, solve labour disputes, establish various schemes and make proposals on labour policies and laws. Many employers are required by law to register with industry-specific bargaining councils which then dictate the terms and conditions of employment in the particular sector. All bargaining councils are funded by levies payable on a 50/50 basis by employers and employees.

The main powers and functions of a bargaining council are to:

- make and enforce collective agreements;
- prevent and resolve labour disputes;
- establish and manage a dispute resolution fund;
- promote and establish training and education schemes;
- establish and manage schemes or funds to benefit its parties or members; and
- make and submit proposals on policies and laws that affect a sector or area.

5.13. Sector Education and Training Authorities

As per the Skills Development Act, a skills fund exists and an employer must pay the Skills Development Levy (SDL) if the employer pays annual salaries, wages and other remuneration in excess of R500 000. Employers with an annual payroll of R500 000 or less (whether registered for employees tax purposes with SARS or not) are exempt from this levy. The levies provide funding for the Sector Education and Training Authorities, which are government bodies responsible for organising education and training programmes within a specific sector. Each sector has its own SETA.

The levy is mandatory, but it is not compulsory for a business to join a SETA or implement SETA programmes in the workplace.

5.14. Department of Agriculture, Forestry and Fisheries

Any person wishing to start an agri-business or business relating to agricultural goods must conform to the regulations as stipulated by the Department of Agriculture, Forestry and Fisheries. Various acts exist pertaining to land use, use of fertilisers, environmental safety and sustainability, etc. These include, but are not limited to, the following:

- Fertilizers, Farm Feeds, Agricultural Remedies Act (No. 36 of 1947)
- Genetically Modified Organisms Act (No. 15 of 1997) Environment Conservation Act (No. 73 of 1989)
- Conservation of Agricultural Resources Act (No. 43 of 1983) (also known as CARA)
- National Veld and Forest Fire Act (No. 101 of 1998)
- Agricultural Product Standards Act, 1990 (Act No. 119 Of 1990)
- The Marketing Of Agricultural Products Act (Act No. 47 Of 1996)

5.15. The National Development Agency

The National Development Agency's primary mandate is to eradicate poverty by granting funds to civil society organizations that implement developmental projects of poor communities. This comprises reinforcement of the institutional capacity of civil society organizations that provide services to poor communities in order to enable them to access developmental resources towards gaining autonomy.

The purpose of the NDA is to provide development grant funding to civil society organisations in order to implement cohesive and sustainable community-driven programmes. This enables the NDA to contribute towards the eradication of poverty by focusing on the following main areas:

- Early childhood development
- Food security
- Income generation (programmes and projects)
- Capacity building
- Support of vulnerable groups

6. Registering of a Business

Government, through various policies and incentives, aims to stimulate and promote the establishment of SMEs. Small and Micro Enterprises in South Africa have an estimated total economic output of 50% of GDP. It is also estimated that SMEs provide employment to about 60% of the labour force. SMEs are therefore an important contributor to the economy and are

considered a driver for reducing unemployment, given that the formal sector continues to shed jobs. It is therefore vital to encourage entrepreneurs to commence new business initiatives. Knowledge with regards to the correct statutory and regulatory procedures will ease the burden of business registration. In this section, the various procedures relating to starting and regulating a business is investigated.

6.1. Company Registration

6.1.1. Category of Company

Once an individual has decided on the type of business start-up, consideration must be given to the form the venture will take. South African legislation provides for various forms of companies. These are:

1. Sole Proprietor
 2. Private Company – (PTY) Ltd.
 3. Personal Liability Company – Inc.
 4. Public Companies (Ltd.)
 5. State Owned Companies – SOC
- **Sole Proprietor:** the simplest of business entities, a sole proprietor trades under his/her own name, with no separation of assets and liabilities. For example, Joe Soap, an accountant, trades as Joe Soap Accountants. There being no separation between Joe Soap's personal assets and liabilities and those of his business, Joe Soap Accountants, he benefits from all the profits and assets accumulated through his business. However, he is also held personally liable for any debts that the business incurs. In other words, his sole proprietorship does not enjoy limited liability.

Unlike sole proprietorships, the following business entities are distinct juristic persons, with a separation being made between the assets and liabilities of the owners/shareholders, and those of the company. In other words, they do enjoy limited liability.

- **Private Company, or (Pty) Ltd:** this business entity may be founded and managed by just one director (known as a **One-Man Company**), and must have at least one shareholder, but no more than 50. (For example, Soap Accounting Services (Pty) Ltd.)
- **Personal Liability Companies (Inc.):** are business entities in which both current and previous directors may be held jointly and severally liable for any debts and liabilities which occur during their time in office. This form of business enterprise is most often used for

firms of professionals, such as doctors, lawyers and accountants. (For example, Joe Soap's accounting firm, Soap, Smit and Sithole, Inc.)

- **Public Companies (Ltd.):** are business entities which issue shares, and are often listed on a stock exchange. Public companies are liable to shareholders and management is invested in a Board of Directors.
- **State Owned Companies (SOC):** are business entities which are either state-owned, like Metrorail, or owned by a municipality, like Centlec Electricity in Bloemfontein.

While sole proprietorships are not required by law to be registered, private companies, personal liability companies, public companies and state owned companies need to be registered with the Companies and Intellectual Properties Commission (CIPC).

In the past, **close corporations** provided small businesses with a cost-effective and simple business entity under which to trade. But, as from May 2011, no new close corporations are being registered by the CIPC.¹

Other forms of business types are:

- **Cooperatives:** A Cooperative is an autonomous association of persons united voluntarily to meet their common economic, social, and cultural needs and aspirations through a jointly-owned and democratically controlled enterprise. In terms of a small business venture, the type of Cooperative will be a worker co-op.
- **Franchises:** A franchise is a business that involves the granting of a license by a franchisor to another party (the franchisee), which entitles the franchisee to trade under the established trade name.

6.1.2. Registration with CIPC

(1) Naming a company

The new Companies Act of 2008, just like the previous Act provides for name reservations. If a proposed name is rejected, the company may still be registered and the registration number then becomes the name of the company at incorporation, until such time as appropriate name has been reserved/approved. In addition, the Act proposes reforming the criteria for acceptance in such a manner that it seeks to give maximum effect to the constitutional right to freedom of expression.

(2) Registering a Company

A company is incorporated by the lodging of the following main forms:

¹Businessowl. 2011

- Notice of Incorporation (CoR 14.1)
- Memorandum of Incorporation (MOI) (CoR 15.1 A-E)

The most important document governing a company is the Memorandum of Incorporation(MOI), which is a consolidation of the current Memorandum and Articles of Association of a company. The Act imposes certain specific requirements on the content of a Memorandum of Incorporation, as necessary to protect the interests of shareholders in the company, and provides for a number of default company rules / alterable provisions, which companies may accept or alter as they wish as long as it aligns with the Companies Act.

The Memorandum of Incorporation CoR 15.1A-E (whichever is applicable) contains the following information:

- Detail of Incorporators
- Number of directors and alternate directors
- Share capital (maximum issued)
- Content of MOI

The Notice of Incorporation (CoR 14.1), which must be lodged together with CoR 15.1 contains the following information:

- Type of company
- Incorporation date
- Financial year end
- Registered address (main office)
- Number of directors
- Company name
 - o Whether company name will be the registration number;
 - o The reserved name and reservation number;
 - o List of 4 (four) names to be checked by the Commission.

6.2. Applying for Tax

6.2.1. Employees' Tax

When an employer pays or becomes liable to pay remuneration to an employee, the employer has an obligation to deduct Employees' Tax from the remuneration and pay the tax deducted to SARS on a monthly basis. In most instances, the employer is obliged to issue each employee with an Employees' Tax certificate [IRP5/IT3(a)] which reflects, amongst other detail, the Employees' Tax

deducted. An employer must apply for registration for employees' tax purposes with SARS within 14 days after he / she becomes an employer unless none of the employees are liable for normal tax.

6.2.2. UIF registration

In terms of Section 10 of the Unemployment Insurance Contributions Act (UIC Act) where an employer is liable to pay contributions, the employer must register with SARS or the UIF office (whichever is applicable to such employer) for the payment of the contributions.

6.2.3. SDL Registration

Section 5 of the SDL Act prescribes that where an employer is liable to pay the levy, the employer must register per EMP101 (Application for Registration) as an employer with SARS in the area in which the business is situated and must indicate the jurisdiction of the SETA within which the employer must be classified as well as the applicable SIC code.

In order to ensure that the application for registration for SDL is processed, the valid classification SETA/SIC codes must be completed. All employers who do not choose a SETA cannot claim their grants as they do not belong to a SETA. They are automatically allocated to SETA 0.

6.2.4. VAT Registration

Should a company's turnover be R300,000 a year or more, it is required by law to register as a VAT (Value Added Tax) vendor. This is done by completing and submitting a VAT101 form, which is available at any SARS office.

Close Corporations must submit the following documentation with their VAT101 forms:

- The VAT127 Form, which must be accompanied by a business plan
- A copy of Form CK1
- Certified copies of the identity documents of the member or members
- A cancelled business cheque
- A copy of a letter issued by the company's accounting officer accepting his or her appointment
- A list of business contacts, if available

Individuals who apply for VAT are classified in a number of categories (a-i), according to the nature of the business, ranging from an individual to a trust. Each category is required to provide supporting

documents. In general, all are required to provide the documents listed below, but some categories are required to provide additional information. It is best to check with SARS into which category the business falls first to ensure the correct documentation is supplied, but in general, the required documents are:²

- Copy of ID document of the individual;
 - Original cancelled cheque or original letter from banker;
 - Copies of:
 - o the latest three (3) bank statements (only where the statements for at least three months can be provided); or
 - o financial information listed in part 4 of the application form (only where less than three months bank statements are available or where no bank statements are available);
 - In case of a practitioner, a letter of Authority / Power of Attorney to authorise the practitioner to act on behalf of the vendor; and
 - Copy of the business municipal account and copy of the residential municipal account of individual, partner or representative vendor;
- o In case of a married individual the municipal account in the name of the spouse may be accepted.
- o If the property is leased, a copy of the lease agreement.

6.3. Opening a Business Bank Account

In order to open a bank account, the applicant needs to have a proof of who the directors are, and the original company documents. This procedure might take longer if required documentation is not in order. The bank must be presented with original company documentation. In general, the following information is required -

- **Proprietorship:** identity document; two trade references; tax number; three month's bank statements if switching accounts
- **CC:** founding statement; Certificate of Incorporation; identity documents of each member; two trade references; three months' bank statements if switching accounts
- **PTY (Ltd):** Memorandum of Incorporation; Certificate of Incorporation; identity documents of shareholders/directors; three months' bank statements if switching accounts.

6.4. Registering with the Department of Labour

All employers must register with the Department of Labour for unemployment insurance and occupational diseases and injuries compensation. This may be done simultaneously.

²VAT404: VAT Guide for Vendors. SARS

6.5. Registering as an Exporter or Importer

All persons who will be exporting commercial goods from South Africa must register with SARS. The same applies to any person wishing to import commercial goods into the country. To register as either an importer or exporter, a person must obtain a form (DA 185) from SARS to register as a customs and excise client. SARS also require additional documentation.

6.6. Sector Specific Business Registrations

The Free State government and ILO target certain categories of SMEs and to that purpose, this section will focus on registration procedures within these identified sectors. The sectors are:

- Non-Profit Organisations and Social Enterprises
- Agriculture
- Tourism
- Social Services Waste Recycling
- Construction

In most instances, the business registration methodology for these sectors is essentially consistent with the requirements for other sectors. Registration for a business name, tax purposes, labour regulations and the establishing of bank accounts are all salient features of any business registration and will not be addressed in this section again, however these procedures must be seen as an integral part of business registration when talking about sector specific regulations. Some aspects are, nevertheless, unique to each of the aforementioned sectors and are discussed at length in this section. These include the unique aspects relating to NPOs and Social Enterprises.

6.6.1. Non Profit Organisations and Social Enterprise

The most popular route taken by communities/ groups and individuals in establishing social services is via registering a Non-profit Organisation (NPO). An NPO is defined, in terms of section 1 of the NPO Act, 71 of 1997 as a trust, company or other association of persons established for a public purpose and of which its income and property are not distributable to its members or office bearers except as reasonable compensation for services rendered. Nongovernmental organisations (NGOs) and community based organisations (CBOs) are collectively known as non-profit organisations (NPOs). In some instance, NPOs are also referred to as Civil Society Organisations (CSO) or Social Enterprises. It must be noted that not all social entrepreneurial ventures fall within the ambit of NPOs. Social entrepreneurship involves individuals who operate a business based on shared social goals, whilst still adhering to market principles.

There often exists confusion with regards to the terminology of NPOs. The term “Non-Profit Organisation” is not a legal entity, but rather a status which requires separate registration. Once a company is registered as a not-for-profit company, it may also register as an NPO.³

It must be noted at this time that a distinction must be made between an NPO and a Public Benefit Organisation. Specifically, a PBO is an entity that qualifies for tax exemption on the basis that it provides activities for public benefit. AS with an NPO, a non-for-profit company, such as a trust, can apply with SARS for PBO status, which will provide it with tax relief.

Item	Voluntary association	Trust	Non-profit company	Co-operatives	Private company
Objective of Entity	An agreed non-profit objective	Owner confers property/funds to group that acts as fiduciaries of assets for the benefit of others	A goal for social or public benefit or upliftment	A common economic, social or cultural goal shared by group of individuals	Any objective, usually profit
Governing document	Either verbal agreement or constitution	Trust deed	Memorandum of Incorporation	Constitution	Memorandum of Incorporation
Relevant act	Common Law and Non-profit Organization Act, No. 71 of 1997	Trust Property Control Act, No. 57 of 1988	Companies Act, No. 71 of 2008	The Co-operative Act, No. 14 of 2005	Companies Act, No. 71 of 2008
Incorporation	Independent legal entity	Not an independent legal entity	Independent legal entity	Legal entities, if registered	Independent legal entity
Membership	Open membership, individual members	Closed membership	Open or closed membership, individual or organizational members, voting and non-voting members	Open or closed membership, individual or organizational members	Closed membership
Governance	Management committee	Board of Trustees	Board of Directors	Committee of officers	Board of Directors

³A guide to legal forms for Social Enterprises in South Africa. Legal Resources Centre. ILO. 2011

Item	Voluntary association	Trust	Non-profit company	Co-operatives	Private company
Registration	Not required, but can be registered with the NPO Directorate	Master of the High Court	Registrar of Companies	Registrar of Co-operatives	Registrar of Companies
Profit distribution	None Reinvested in VA's stated objectives	In line with Trust's stated objectives	None Reinvested in the NPO's stated objectives	Profit distributed amongst Co-op members	Profit distributed amongst shareholders
Tax exemption	If registered as a PBO	If registered as a PBO	If registered as a PBO	None	None

Source: *The Potential of Non-Profit Organisations in the Free State to Adopt a Social Enterprise Approach*, South Africa SME Observatory and the ILO, 2013

6.6.2. Agriculture

Certain aspects pertain uniquely to the registration of an agricultural venture. These include selection of the farm and type of farming activity. This is discussed more broadly in the main document.

6.6.3. Tourism

Certain aspects pertain uniquely to the registration of a tourism venture. This being said, there is only a few compulsory national sector-specific regulations that apply to tourism SMEs strictly in their capacity as tourism firms. These stipulations are the 2001 Regulations issued under the Tourism Act, 1993, as amended, 2000. These regulations are relatively challenging. Registration as a tour guide is conditional upon formal proof of competence, which in turn requires tour guides to have a valid heavy vehicle license and to have undergone often rather rigorous, province-specific training, accredited by the Tourism, Hospitality and Sport Education and Training Authority (THETA). Provincial tourism authorities have been created under provincial tourism Acts, requiring that tourism firms within their jurisdiction be registered with the provincial tourism authority. In the case of the Free State, Tourism firms should register with the Free State Tourism Authority as per the Free State Tourism Authority Act No. 3 of 2005.

6.6.4. Construction

A typical construction team includes the following members:

- An architect
- An engineer (civil, structural, electrical, mechanical)

- A Quantity Surveyor
- A Project Manager

The regular rules and regulations apply to contractors for VAT in the construction sector. A brief note on the calculation of VAT for construction is the point that construction works' project values are added to the purchases of materials, hire of equipment etc., which have been bought for the works. If the construction works contract is worth R100 000 (excluding VAT) then the VAT that the employer will be charged is R14 000 (14% of R100 000). This R14 000 is held by the contractor on behalf of SARS until the due date for payment. This tax is known as the "output tax." Before paying the tax to SARS, the contractor is allowed to deduct from this amount, the amount of VAT that is paid to VAT vendors in purchases of materials, hire of equipment etc. This tax is known as input tax.

6.6.5. Social Services

In general, social welfare services focus on meeting the needs of and building on the strengths of individuals, families, communities and other social groups through the provision of a comprehensive range of services and programmes that extend beyond the inherent capacity of individuals and their natural support networks.

Core services rendered by the social services sector have been grouped into five broad categories:

- Promotion and prevention services
- Rehabilitation services
- Protection services
- Continuing care services
- Mental health and addiction services

7. SME Lifecycle Requirements

The aim of this section is to elucidate the various aspects relating to SME lifecycle requirements. Various procedures must be completed on a monthly or yearly basis to ensure SMEs adhere to the regulatory framework. These requirements involve, inter alia, registrations, tax returns and reports to various institutions. The section is broken down into categories on:

- Tax
- Customs and Excise
- CIPC requirements
- Co-operatives compliance
- Annual reports for NPOs
- COIDA annual requirements

- Annual compliance in the Construction Industry
- Annual Tourism compliance
- Social services annual compliance

8. Identifying potential areas of red tape and bottlenecks

‘Red Tape’ is a short hand for unnecessary or excessively complicated regulations and inefficient administrative processes” (SBP 2008, 9). The expression ‘red tape’ refers to any unnecessary or redundant regulation that hinders productivity (CFIB 2010, 2).

Legislation, regulations, fees, permits, paperwork, standards, processing time, guidelines, filing and certification requirements, reporting, investigation, inspection and enforcement practices, and any procedures that affect efficiency of government services for the clients served.

The impacts of red tape are numerous and often have cost implications for businesses as a result of slow turnaround time by municipal units, additional costs which may compromise the growth, survival, or sustainability of the business, leading to lost business opportunities, which in turn has a negative impact on job creation and ultimately municipal revenue. The main areas of focus for this document are red tape as pertaining to rules and regulations designed to achieve policy goals, but not achieving them, as well as inefficient procedural systems in terms of administrative management.

Over-regulation has been identified by the business community as a significant constraint to growth. The five most time consuming and troublesome categories of regulations, according to business surveys are:

- Tax related - VAT, tax administration, UIF, PAYE
- Labour related - The Commission for Conciliation, Mediation and Arbitration (CCMA) and bargaining councils.
- Sectoral Education Training Authority (SETA) related
- Municipality related - regulations, charges and levies.
- Health, safety and BEE

The areas of red tape investigated in the document relate to:

- Property rates
- Levies
- Tax
- Town Planning and zoning
- Business Licensing

- Environmental Policies
- Construction regulations
- Labour regulations
- Customs and excise

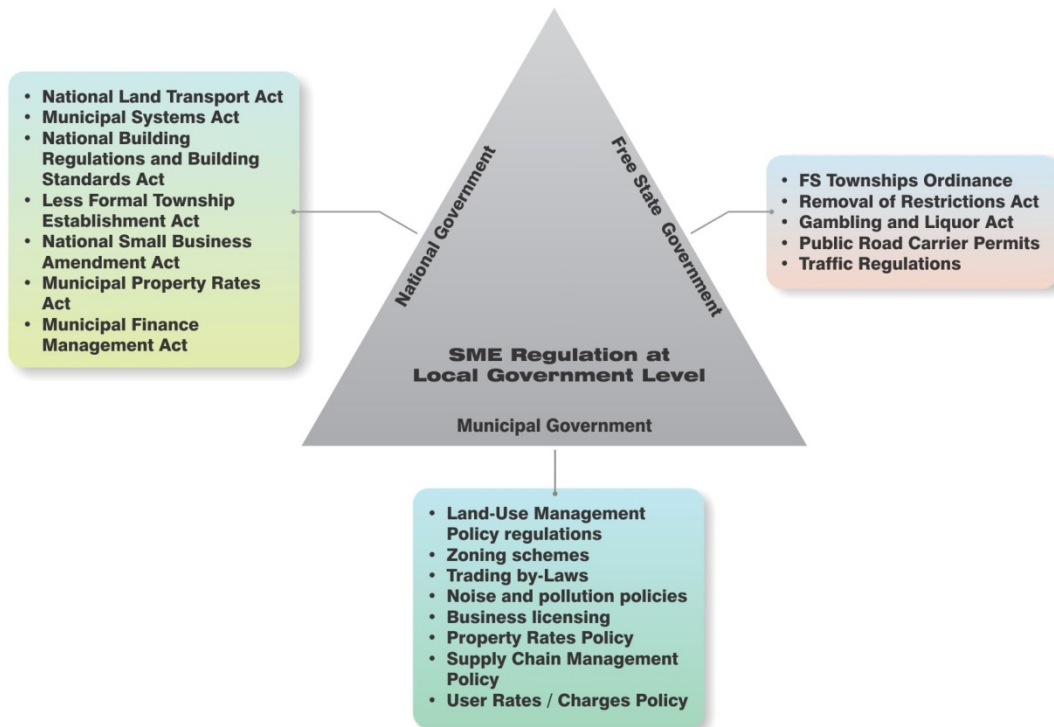
A regulatory framework review is suggested to identify the main problems in terms of red tape and red tape reduction.

9. Free State SME Regulatory Procedures

The SME development landscape in South Africa is regarded as challenging. Among the identified factors that inhibit SME growth are inadequate business support services, inadequate access to finance and poor quality or absence of business premises or infrastructure. Much of the challenges relating to SME development fall within the ambit of Local Government and include aspects such as registration procedures, business premises, infrastructure as well as rates and taxes.

The purpose of this section is to focus on SME registration procedures, regulatory constraints and investment incentives at local government level (i.e. Free State and Municipal requirements). The diagram below provides an illustration of the SME regulatory environment at local level.

SME Regulatory Environment at Local Government Level



The contribution of Local Government in the Free State to these factors varies and may be direct or indirect. The legislative mandate and powers of Local Government is based on National Legislation and Policies. The Constitution does, however, provide a level of regulatory independence for Local Government in South Africa. For example, Municipalities are not allowed to advance loans to SMEs but efficient business licensing and registration could facilitate access to private loans for small business. Similarly, the Free State Provincial Government could process gambling and liquor applications more efficiently. Municipalities also have the independent right to regulate (i.e. approve or disapprove) land-use applications for development. The conclusion here is that while SME Development Policy falls mainly in the sphere of National Government, there are many elements at Provincial and Local Level that create or hinder the business environment in which SMEs operate.

The legislative framework investigated is:

- The National Land Transport Act (No. 5 of 2009)
- The Municipal Systems Act (No. 32 of 2000)
- National Building Regulations and Standards (No. 103 of 1977)
- Less Formal Township Establishment Act (No. 113 of 1991)
- National Small Business Amendment Act (No. 29 of 2004)
- Municipal Property Rates Act (No. 6 of 2004)
- Municipal Finance Management Act (No. 56 of 2003)
- FS Townships Ordinance (No. 9 of 1969)
- Gambling & Liquor Act (No. 6 of 2010)
- Free State Provincial Road Act (No. 2 of 1998) and Road Permit Regulations
- Free State Bed and Breakfast and Guest House standard By-Law (No. 170 of 2011)
- Mangaung Metropolitan Municipality by-laws:
 - o Street Trading
 - o Outdoor advertising
 - o Electricity
 - o Water
 - o Industrial Effluents
 - o Municipal Property rates
- Matjhabeng Local Municipality by-laws
 - o Municipal Property Rates
 - o Street Trading
 - o Tariffs

10. Applicable requirements for doing business with Government

In order to be able to do business with government, a business must adhere to certain principles and guidelines. These guidelines are informed by Section 217 of the Constitution of the Republic of South Africa which requires an organ of state to contract for goods or services in accordance with a system which is fair, equitable, transparent, competitive and cost effective. Model policies are available for all local municipalities and must conform to section 111 of the Municipal Finance Management Act, No 56 of 2003 and the Municipal Supply Chain Management Regulations (Notice 858 of 2005).

11. Development Implications

Given South Africa's legacy of an unequal economy, it is essential that local government promote and develop small business. The SME sector is a vital source for job creation and skills development and forms the basis of a growing economy. Many SMEs struggle with compliance and government should develop SME friendly policies which reduce the administrative cost of compliance that many small businesses struggle with and which create barriers for small businesses to formalise. In some areas, such as the new Companies Act, these goals are being delivered, but there is a need to further consolidate legislation and streamline the process of registration and start-up procedures for small enterprises in order for many of these to make the transition from the informal to the formal economy. Implementation of the *"Guidelines for Reducing Municipal Red tape – how municipalities can Improve Service Delivery that Support Small Business"* published by the dti and cogta (2013) will go a long way in supporting municipalities in their efforts to create a legal and regulatory framework in support of SME development.

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Section One: Introduction

“Reducing the regulatory constraints on small micro and medium enterprises (SMMEs) is one of the key focus areas of the South African Government”

- Rob Davis, Minister of Trade and Industry⁴

A viable means of lowering unemployment in the local economy, and the Free State in particular, is the successful promotion of SME output. In this regard, SMEs play a much larger role in developing economies than in industrial countries, since SMEs make a major contribution to socio-political stability. Effective and sustainable SMEs assist in absorbing the unemployed labour force. Failure in promoting and sustaining SMEs may result in exacerbating the unemployment problem, resulting in growing poverty, inequality and in some instances, even crime. SME development remains one of the most effective vehicles toward black economic empowerment via the redistribution of productive assets.⁵ It is also vital to boost SME creation and registration to reduce the current overdependence on state benefits. Also crucial to the economic advancement of the Free State is building a society that can create wealth more efficiently, thereby creating equitable growth.

1.1. Purpose of the Study

The purpose of this study is to produce a simple Stock-take of South African and Free State specific policies, laws and regulations with a direct bearing on SME development and make this available to potential, emerging and established entrepreneurs in order to clarify some of the questions entrepreneurs may have with regards to the policy, legal and regulatory requirements for the sector they operate in and the type of business they run. The report does not touch conclusively on laws and regulations regarding SME development, but aims to address the most important ones. Neither does it attempt to make any conclusions with regards to level of compliance and compliances costs for SMEs, although the concluding remarks point to recommendations as well. The reader should also bear in mind that policies, laws and regulations change often so by the time of reading some of the information in this stock take may already be out of date. The stock-take has been prepared by Urban Econ together with the ILO through the Free State SME Development Initiative.

⁴ *Guidelines for Reducing Municipal Red tape – How municipalities can improve service delivery that supports small business, Department for Trade and Industry, 2013*

⁵ *Access to Finance in South Africa- a Supply Side Regulatory Review: The Task Group of the Policy Board for Financial Services and Regulation: Hans Falkena (Chairman) et al. 2001*

There are an estimated 2.8 million SMEs and 17 000 registered cooperatives in South Africa. The SME sector contributes between 52% and 57% to the national GDP and nearly 61% to employment. The Free State SME Development Initiative is aimed at stimulating job creation in the Province through interventions targeting local SMEs in sectors such as agribusiness, construction, social services, and tourism. The purpose of this study is to conduct an investigation into the business registration process towards the identification of real and potential hurdles (i.e. difficulties resulting from red tape) for small businesses and entrepreneurs.

The resultant data will direct the study towards development implications and form the basis for the establishment of practicable recommendations towards improving the ease of establishing start-up business initiatives in the Province. The subsequent outcomes will advance the progress of Free State SMEs by highlighting the regulatory framework, its accompanying red tape and suggesting viable alternatives in order to further the goal of enhancing human dignity through long term socio-economic development.

1.2. Methodology

The study requires a specialised analysis of the data to elucidate current legislation and policies, as well as an exploration of the challenges faced by SMEs in terms of legislative and bureaucratic bottlenecks. To address these questions requires a comprehensive review of relevant literature.

The scope of the report is categorised into the following main aspects:

- a) Unpacking the business registration procedures applicable to SMEs. The following SME sectors will be especially relevant:
 - a. Agribusiness
 - b. Construction
 - c. Social services
 - d. Tourism
- b) Investigating SME registration procedures/processes in terms of:
 - a. Time
 - b. Costs
 - c. Requirements (e.g. employment thresholds, VAT and other taxation, legal entity types)
 - d. Business Types
 - e. Where businesses (institutions) must be registered in accordance with the regulatory framework.
- c) Determining the lifecycle requirements applicable to SMEs:

- a. Annual requirements applicable to SMEs
- b. Requirements in relation to SARS (tax returns, dividends etc.)
- c. Import/Export requirements (annual permits, registration, fees etc.)
- d) Clarifying the procedures applicable in doing business with government.
- e) Identifying potential areas of red tape and bottlenecks regarding these processes and to develop a set of recommendations for the client.
- f) Ascertaining the pertinent Development Implications and supplying applicable suggestions to alleviate bureaucratic deficits.

Section Two: SME Regulatory Evaluation Framework

Various legislative and regulatory policies exist which are mandatory for the application, registration and implementation process of creating a small business. These different statutory requirements regulate the operation and standardisation of the SME environment of South Africa. In order to gain full perspective on the current SME registration status quo in the Free State, it is imperative to elucidate the various applicable legislative and regulatory requisites for establishing and operating a small business in the Province. These requisites include, inter alia, State laws, municipal by-laws, tax regulations, labour protocols and various acts pertaining to corporation and business functions.

2.1 Review of Key Business and Commerce Legislation applicable to Business Registration

Depending on the size of the company being registered, various regulations may become applicable (especially with regards to the South African Revenue Service and the Department of Labour). Local and Metropolitan Municipalities also proclaim their own by-laws that may apply to SMEs.

2.1.1. The Companies Act of South Africa (2008)

The Companies Act (2008) provides the regulatory framework for registering a business in South Africa. The main institution involved in the process is the Companies and Intellectual Property Commission (CIPC) which merged the previous *Office of Companies and Intellectual Property Enforcement (OCIPE)* & the *Companies and Intellectual Property Registration Office (CIPRO)*.

The Companies Act was introduced in Parliament during 2008 and published for general comment on 27 June 2008 as Bill No. 61 of 2008. The Portfolio Committee on Trade and Industry received a large volume of written comments, as well as oral representations during the public hearings on the Companies Bill, in the latter half of 2008.

The main features of the Companies Act, 2008 are as follows:

- I. It has been modernised and brought into line with international best practices. This applies in particular to public companies, communications and corporate governance. At the same time, it has been harmonised with other South African legislation, such as the Promotion of Access to Information Act (PAIA) and the Electronic Communications and Transactions (ECT) Act.

2. It has been simplified and made less prescriptive to make it easier to understand and apply, in the following ways:
 - a) It was drafted in plain language and the number of sections has been reduced from 450 to 225.
 - b) The rules relating to pre-incorporation contracts have been simplified, making it possible for any person to enter into a pre-incorporation contract.
 - c) Fewer statutory forms are required to incorporate a company. Rather than a memorandum and articles of association, a company's constitutional documents will now consist of one document only, the Memorandum of Incorporation (Mol).
 - d) The Mol sets out the rights, duties and responsibilities of shareholders, directors and others in relation to the company. A company may alter certain provisions of the Act in its Mol, but there are specific provisions that may not be altered that apply notwithstanding the provisions of the Memorandum of Incorporation. In this way, certain protections are built into the Act. All current articles and memoranda of association will automatically be converted to a Mol.
 - e) Companies are allowed to change certain requirements according to their own circumstances – in addition to the Mol, companies can now make certain governance rules themselves.
 - f) Different types of companies must comply with different rules. This means smaller companies have less arduous responsibilities than large public companies when it comes to corporate governance and financial reporting. For instance, smaller companies will be subject to less taxing financial reporting standards than larger companies. The regulatory burden on companies has been reduced, but there are stricter accountability and transparency requirements for state-owned and public companies.
 - g) Shareholders have extensive rights to obtain information from the company, including access to the securities register and minutes of directors meetings. Greater director accountability and the appropriate participation of all stakeholders ensure improved transparency.

3. High standards of corporate governance are encouraged, with minimum accounting standards having been set for annual reports. So too, there are stricter provisions governing directors' conduct and liability, and their common law duties and liabilities have now been codified. A new feature is that an act of a company is not void solely because the company did not have the capacity to do the act or the directors did not have the authority to perform the act on behalf of the company. No person may rely on this lack of capacity, power or authority in legal proceedings, except in certain specified circumstances. A

company is specifically prohibited from reckless, negligent or fraudulent trading and persons who were knowingly party to such conduct are guilty of an offence.

4. The Act contains new structural arrangements, with the introduction of new regulatory institutions and the transformation of others. Companies are now classified as either profit or non-profit companies.
5. Take-overs and fundamental transactions receive greater attention, with radical changes to the take-over provisions contained in the Companies Act, 1973. This applies particularly with regard to minority shareholding and appraisal rights for dissenting minority shareholders. New rules relate mergers and amalgamations, allowing two companies to merge into one entity, provided that the solvency and liquidity test is satisfied and certain approvals are obtained.
6. Capital maintenance will now be based on solvency and liquidity rather than a minimum amount of share capital consisting of par value shares and nominal value shares.
7. The concept of business rescue is broadened and formalised, and provision is made for a modern business rescue regime. Schemes of arrangement are dealt with separately under the Act.
8. There is a move towards the decriminalisation of company law and the establishment of bodies for the effective enforcement of the legislation. However, minority shareholders and other stakeholders, such as employees, will have better protection, powers and remedies under the Act, including the ability to bring class actions. ⁶

2.1.1.1. *Company Legislation Plan*

The Company Legislation Plan of the Act implies that all existing close corporations will retain their current status. Only once all members of the corporation decide that it is to their benefit to convert to a company, will this occur. This implies that the Act provides for the indeterminate continued existence of the Close Corporations Act. However, it also affords an opportunity for the closing of that Act as an opportunity for the incorporation of new entities or alternatively, for the conversion of existing companies into close corporations.

2.1.1.2. *Institutional Reform*

The Companies Act established a new institution, the *Companies and Intellectual Property Commission*. Furthermore, three existing company law entities, namely the Take-over Regulation Panel, the Financial Reporting Standards Council and the Companies Tribunal, were transformed and together, these four institutions provide a more foreseeable regulatory and enforcement system. The Companies and Intellectual Property Commission Chapter 8 of the Act provides for the migration of the Companies and Intellectual Property Registration Office (CIPRO) into a new body, with

⁶The Companies Act, no. 71 of 2008: An Explanatory Guide Replacing The Companies Act, no. 61 of 1973: dti: 2010

pointedly expanded functions and powers, known as the Companies and Intellectual Property Commission (“the Commission”). The Commission merged with CIPRO and the enforcement division of the dti, known as the Office of Company and Intellectual Property Enforcement (OCIPE). The Act now provides for most of the administrative functions currently assigned to the Minister under the previous Companies Act, 1973, (apart from the appointment of members of the institutions and the making of regulations), to be de-politicised and to be instituted within the authority of the Commission. Nevertheless, the Minister still has the capacity to issue policy directives to the Commission.

The main functions of the Commission are as follows:

- Register companies, Co-operatives and intellectual property rights and maintain a register of these entities;
- Disclose information on its register;
- Promote education about company and intellectual property law and create awareness thereof;
- Promote compliance with the relevant legislation;
- Ensure the efficient and effective enforcement of relevant legislation;
- Monitor compliance with financial reporting standards and infringements of such standards and make subsequent recommendations in this respect;
- Report to the Minister of Trade and Industry, conduct research for the Minister and advise him/her on matters of national policy relating to company and intellectual property law.

2.1.1.3. Types/categories of Companies

The new Companies Act provides for two types of companies, namely Profit and Non-Profit companies.

(a) Profit Companies

These companies may be divided into four sub-categories, namely a personal liability company, a state-owned company, a public company and a private company. The core aspects of profit companies are that they are divided into two groups, i.e. those not restricted on the transferability of their shares and do not prohibit offerings to the public. These are usually larger companies. Smaller companies typically have restrictions on the transference of their shares that prohibit offers to the public.

(b) Personal Liability Companies

Such companies' names must end in "Inc." or incorporated and is comparable to companies described in section 53(b) of the Companies Act 1973.

(c) State-owned Companies

The name of these companies must end in "SOE Ltd." and refers to companies owned by the State and often incorporated in the Companies act so as not to require separate legislative treatment which may conflict with other companies.

(d) Public Companies

Public companies all have the following characteristics:

- o Their Mol permits them to offer shares to the public but restricts, limits or negates their right of pre-emption.
- o The name of a public company must end with the word "Limited" or its abbreviation, "Ltd."
- o The incorporators of a public company must consist of at least one person. The word "person" includes a juristic person, as provided under section 1 of the Act.
- o A public company must have at least three directors.

(e) Private Companies

A Private Company may be characterised as follows:

- o They are subject to fewer disclosure and transparency requirements.
- o A private company will still be prohibited from offering its shares to the public and the transferability of its shares will be restricted, but it may now have more than 50 shareholders.
- o The name of a private company must end with the expression "Proprietary Limited" or its abbreviation "(Pty) Ltd."
- o The board of a private company must comprise at least one director, or any other minimum number as stipulated in its Mol. Each incorporator is a first director of the company.
- o In a further effort to create a more flexible regime, the Bill makes exceptions for companies of which –
 - ✓ All the shares are owned by related persons, so that there is less need to protect minority shareholders; or

- ✓ All of the shareholders are directors, so that there is less need to seek shareholder approval for certain board actions.

(f) Non-Profit Companies

Non-Profit companies replace companies limited by guarantee and Section 21 companies. They may be characterised as follows:

- o They are incorporated for public benefit;
- o Income and property may not be dispersed to the incorporators, members, directors or officers of a non-profit company, except for reasonable recompense for services rendered by these individuals.
- o The name of a non-profit company will end with “NPC”.
- o A minimum of three persons, called incorporators, must complete and sign the Mol.
- o A minimum of three directors must be appointed.
- o All of a non-profit company’s assets and income must be used to advance its stated objects, as set out in its Mol.
- o Non-profit companies are subject to a varied application of the Act, as set out in section 10.
- o A distinct set of essential rules for non-profit companies exist in Schedule I of the Companies Act, 2008. According to these rules, the objects of non-profit companies remain subject to the current principles. In addition, on their dissolution, non-profit companies are limited in terms of the distribution of any residual assets. These rules also include various other matters which only apply to non-profit companies.

(g) 2.1.1.5. Closed Corporations

Under the Act, smaller businesses are no longer routinely subject to strict financial reporting and auditing requirements. This allows companies with characteristics very similar to those of close corporations to be formed. Once the Companies Act, 2008 came into operation, it was no longer possible to register any new close corporations, nor may companies be converted into close corporations.

Existing close corporations are now managed accordingly:

- Existing CCs will exist indefinitely.
- Existing CCs will be treated as private companies, and the Close Corporations Act will be brought into line with legislation on private companies.

2.1.1.4. **Company Formation**

“The Act gives effect to the essential core principle that the formation of a company is an action by persons in the exercise of their constitutional right to freedom of association combined with their common law right to freedom of contract.”⁷

The abovementioned quotation reveals that the Act, in both its language and its substance, echoes the principle that the incorporation of a company is a right, not some privilege the State confers. Subsequently, the Act places the minimum requirements on the act of incorporation.

Once a Mol is adopted, a company can be incorporated. The Mol is the sole governing document of the company. Certain specific requirements on the content of a Mol must be met in order to protect the interests of all shareholders in the company. Furthermore, it provides a quantity of default rules which companies may either accept or modify to meet their specific needs.

The Act also allows for companies to add to the requisite or default provisions to address those matters not dealt with in the Act itself, however, every provision made within a Mol must be consistent with the Act (except to the degree that it expressly contemplates otherwise). This implies that a company cannot simply ‘contract out’ of the Companies Act, 2008. For the companies who want to opt out of the Act, it offers the simplest form of incorporation which involves a standard form of Mol; this permits the incorporators to accept the required and default provisions, with alteration or without.

2.1.1.5. **Company Names**

The new Companies Act of 2008 retains the main accepted principles involved in the registration of company names, however, the practice of name reservation, although retained, is no longer mandatory. Name registration is no longer a separate, pre-registration process. Should a registration name be rejected on certain grounds, the company registration number becomes the default name of the registered company. Transitional provisions in the Act allows for existing registered or reserved names to remain so.

As far as the criteria for acceptable company names are concerned, the Act believes in the constitutional right to freedom of expression, thereby placing very few restrictions on name registration.

⁷The Companies Act, no. 71 of 2008: An Explanatory Guide Replacing The Companies Act, no. 61 of 1973: dti: 2010

Some of these restrictions include:

- A company may not register a misleading name and the Act protects the public from names which may imply associations which do not truly exist;
- Owners of names or other intellectual property are protected under the Act from other entities who seek to misappropriate said owners' reputation;
- Society as a whole is protected by the Act from any names which are deemed to be hateful or negative in nature;
- The Act also contains provisions to prevent so-called "name squatting" or the illegal appropriation of existing company names.
- Names may be forwarded to the HRC (Human Rights Commission) if any uncertainty exists as to the suitable nature of a name.
- Where associated names are involved, the associated companies must prove to the Commission that a similar name is warranted.

The administrative discretion afforded to the previous Act of 1973 with regards to company names no longer applies. This implies that companies may now use symbols as part of their company names and that all languages are allowed, as well as translation of names.

Contravention of any of the following provisions of the Act is deemed a criminal offence:

- A company has to disclose its full name and registration to any person on demand.
- A company may not misstate its name or registration number in such a way that it would be misleading or likely to deceive anyone.
- No un-authorised person may use the name of a company to create the impression that said individual is acting on behalf of the company.
- No person may use any form of name to create a false impression that the form of designation used represents the name of a company.

2.1.1.6. *Company Finance*

The Companies Act 2008 provides for a shift away from par value as a means of capital maintenance to one of liquidity and solvency. This implies that a solvency and liquidity test is applied which consist of the following:

- The assets of the company, fairly valued, must equal or exceed its liabilities, fairly valued;
- The company must be able to pay its debts as they become due in the ordinary course of business for 12 months after the date of the test, or 12 months after a distribution to shareholders.

The interest of minority shareholders remain protected as they are still required to approve share and options issues.

There are certain criteria for which the solvency test must be applied. These include:

- If the company purchases its own shares back from a shareholder;
- If a company's subsidiary purchases shares in the holding company;
- If the company provides financial assistance to any individual to purchase company shares or subscribe to company shares;
- If the company makes any distribution (including dividends);
- If the company provides a director with financial assistance;
- If the company becomes party to a statutory merger.

2.1.2. The Bills of Exchange Act(1964)

The Bills of Exchange Act 34 of 1964 as amended by Act 56 of 2000, forms the foundation of commercial law in South Africa and is directly applicable to the way in which SMEs conduct business. The Act deals directly with promissory notes, cheques and bills of exchange to consolidate all legislation relating to the aforementioned three entities. It was the first South African legislation on negotiable instruments.

The amendment to the Act mainly relates to the following:

- In essence, the act is an English one, therefore the introduction of an English statute into a civil law background;
- Technological advances in banking;
- The intentional negligence of banks in the collection of cheques;
- The institutionalisation and regulation of non-transferrable cheques. ⁸

The amendment was implemented so as to provide for the clarification of certain provisions; the protection of users; the accommodation of technological advancements; and the reduction of the incidence of fraud; and to provide for matters incidental thereto.

The five new sections included in the new amendment are:

- Section 43A: Presentment of cheques for payment by a collecting bank to the drawee bank
- Section 54A: The liability of the signer of an endorsement
- Section 72A: The liability of a drawer bank that has certified a cheque

⁸Introduction To The Law Of South Africa: C. G. Van Der Merwe, J. E. Du Plessis: 2004: Kluwer Law International

- Section 72B: The prevention of fraud by means of the imposition of new duties on certain categories of persons.
- Section 75A: Non-transferable cheques.⁹

Each of these new sections brought about significant changes in the law of negotiable instruments, especially with regards to cheques.

Certain essential aspects relating to this Act are:

- Bills of exchange (and therefore cheques) are payable to a bearer or to order, or may be non-transferrable;
- A cheque is only payable to a bearer if it is expressly stated on the cheque as “payable to bearer”, “cash”, “cash or bearer” or “cash or order”;
- A bill is deemed to be non-transferrable if it is endorsed to be paid to a certain individual or if it contains words prohibiting any transfer. This applies to cheques as well, although the 2000 amendment to the Act allows for a specific non-transferable cheque.
- By signing and delivering a bill of exchange (a cheque) the drawer of the cheque understands that the cheque will be honoured by the drawee.¹⁰

2.1.3. The Income Tax Act (1962)

This Act was written to consolidate the law relating to the taxation of incomes and donations, to provide for the recovery of taxes on persons, to provide for the deduction by employers of amounts from the remuneration of employees in respect of certain tax liabilities of employees, and to provide for the making of provisional tax payments and for the payment into the National Revenue Fund of portions of the normal tax and interest and other charges in respect of such taxes, and to provide for related matters. The Act is amended up to and including the Taxation Laws Amendment Act, No. 7 of 2010 and the Taxation Laws Second Amendment Act No. 8 of 2010.¹¹ Detailed descriptions of tax procedures may be viewed in 2.3.2.3 of this report.

2.1.4. The Value Added Tax Act (1991)

The Value Added Tax Act, 1991, stipulates that Value Added Tax or VAT is an indirect tax based on consumption in the economy. Revenue is raised for the government by requiring certain traders (vendors) to register and to charge VAT on taxable supplies of goods or services. Vendors act as the agent of the government in collecting the VAT charged on taxable transactions. SARS is a government agency which administers the VAT Act and ensures that the tax is collected and that the

⁹Handbook on the Law of Negotiable Instruments: Leonard Gering, Douglas Tobias: 2007: Juta & Co.

¹⁰Introduction To The Law Of South Africa: C. G. Van Der Merwe, J. E. Du Plessis: 2004: Kluwer Law International

¹¹South African tax summary: Susan Deacon Property Group: 2008. Reprinted with kind permission of Mariette Cruywagen; Cliff Dekker Inc.

tax law is properly enforced. Many countries apply a form of indirect or consumption tax like VAT, and although these tax systems might be known by different names, for example, GST (Goods and Services Tax), the characteristics of the tax are normally quite similar.

The generally accepted essential characteristics of a VAT-type tax are as follows:

- The tax applies generally to transactions related to goods and services.
- It is proportional to the price charged for the goods and services.
- It is charged at each stage of the production and distribution process.
- The taxable person (vendor) may deduct the tax paid during the preceding stages (that is, the burden of the tax is on the final consumer). ¹²

VAT is only charged on taxable supplies made by a vendor. Taxable supplies include supplies for which VAT is charged at either the standard rate or zero rate, but does not include:

- salaries and wages;
- hobbies or any private recreational pursuits (not conducted in the form of a business);
- occasional private sale of personal or domestic items;
- exempt supplies¹³

The South African VAT is destination based, which means that only the consumption of goods and services in South Africa is taxed. VAT is therefore paid on the supply of goods or services in South Africa as well as on the importation of goods into South Africa. VAT is presently levied at the standard rate of 14% on most supplies and importations, but there is a limited range of goods and services which are either exempt, or which are subject to tax at the zero rate (for example, exports are taxed at 0%). The importation of services is only subject to VAT where the importer is not a vendor, or where the services are imported for private or exempt purposes. Certain imports of goods or services are exempt from VAT (refer to Chapters 5 and 10 for more details).

Persons who make taxable supplies in excess of R1 million in any consecutive 12-month period are liable for compulsory VAT registration, but a person may also choose to register voluntarily provided that the minimum threshold of R50 000 has been exceeded in the past 12-month period. Persons who are liable to register, and those who have registered voluntarily, are referred to as vendors. Any person who carries on an enterprise and whose total value of taxable supplies (taxable turnover) exceeds, or is likely to exceed, the compulsory VAT registration threshold, must register for VAT.

¹²VAT404 *Comprehensive Guide for Vendors*: SARS: 2010

¹³ Ibid.

Vendors have to perform certain duties and take on certain responsibilities if they are registered or liable to register for VAT. For example, vendors are required to ensure that VAT is collected on taxable transactions, that they submit returns and payments on time, that they issue tax invoices where required, that they include VAT in all prices advertised or quoted etc. The mechanics of the VAT system are based on a subtractive or credit input method which allows the vendor to deduct the tax incurred on enterprise inputs (input tax) from the tax collected on the supplies made by the enterprise (output tax). There are, however, some expenses upon which input tax is specifically denied, such as the acquisition of motor cars and entertainment. The vendor reports to SARS at the end of every tax period on a VAT 201 return, where the input tax incurred for the tax period is offset against the output tax collected for the tax period and the balance is paid to SARS (normally by no later than the 25th day after the end of the tax period concerned). The VAT collected by vendors is usually paid over to SARS every two months, but where the value of taxable supplies in a 12 month periods exceeds R30 million, the vendor must account for VAT on a monthly basis. Certain farming enterprises are allowed to pay VAT on a bi-annual basis and small businesses with taxable supplies less than R1.5 million in any consecutive 12-month period may pay their VAT every four months.¹⁴

2.1.5. Small Business Tax Amnesty and Amendment of Taxation Laws Act (2006)

The Small Business Tax Amnesty and Amendment of Taxation Laws Bill, 2006, introduces a tax amnesty for small business and introduces amendments to the Transfer Duty Act, 1949, the Estate Duty Act, 1955, the Income Tax Act, 1962, the Customs and Excise Act, 1964, the Stamp Duties Act, 1968, the Value-Added Tax Act, 1991, the Tax on Retirement Funds Act, 1996, the Uncertificated Securities Tax Act, 1998, and the Local Government: Municipal Structures Act, 1998.

Small businesses play an important role in stimulating economic activity, job creation, poverty alleviation and the general improvement of living standards. Many small businesses operate informally, were historically marginalised and were excluded from the economic mainstream, thus remaining outside of the tax system. These small businesses are now keen to regularise their tax affairs but an obstacle is their past non-compliance and the resultant potential tax liabilities, penalties and interest.

SARS' tax-base broadening efforts and "walkabouts" in informal business areas have indicated that numerous small businesses are not on register or have not made full disclosure to SARS and would like the opportunity for regularisation without fear of tax liabilities arising out of past non-compliance. This also includes taxi operators who want to participate in the taxi recapitalisation

¹⁴VAT404 *Comprehensive Guide for Vendors*: SARS: 2010

program. The Minister of Finance, therefore, announced in the 2006 Budget that Government will introduce a tax amnesty for small business. The purpose and objective of the tax amnesty is, therefore, to:

- broaden the tax base;
- facilitate the normalisation of the tax affairs of small businesses;
- increase and improve the tax compliance culture; and
- facilitate participation in the tax recapitalisation programme.

Any individual, unlisted company, close corporation, trust, Co-operative or insolvent or deceased estate of an individual which meets certain requirements may apply for tax amnesty. The requirements are that:

- the individual or entity must have carried on a business;
- the gross income (turnover) of the business (or businesses if the individual or entity carried on more than one business) during the 2006 year of assessment was not more than R10 million;
- in the case of a company or close corporation all the shares or members' interests were held directly by individuals throughout the 2006 year of assessment;
- in the case of a trust all the beneficiaries of that trust throughout the 2006 year of assessment must have been natural persons.¹⁵

2.1.6. The Broad Based Black Economic Empowerment Act (2003)¹⁶

The B-BBEE Act of 2003 was established as a legislative framework for the promotion of black economic empowerment, to empower the Minister to issue codes of good practice and to publish transformation charters, as well as to establish the Black Economic Empowerment Advisory Council and to provide for matters connected therewith.¹⁷

The goal of broad based empowerment is the distribution of wealth across the widest range of South African society possible. Since the new democracy, Broad-Based Black Economic Empowerment (B-BBEE) has been adopted as an initiative of the South African Government aimed at promoting economic transformation in order to enable meaningful participation of black people in the economy. The BEE Act of 2003 outlines the required targeted areas of development within the South African economy. These key development areas have measurable outcomes in ensuring a path to greater broad-based and effective economic participation, the right to equality, increased

¹⁵Explanatory Memorandum Small Business Tax Amnesty And Amendment Of Taxation Laws Bill, 2006. SARS.

¹⁶The dti B-BBEE website: <http://bee.thedti.gov.za/11.htm>

¹⁷The Broad based Black Economic Empowerment Act 53, 2003: Government Gazette. 2004.

employment, more equitable income distribution, economic unity of the nation, equal opportunity and access to services and protection of the common market place.

In February 2007 the Codes of Good Practice on B-BBEE were gazetted and released in providing a clear and comprehensive framework for the measurement of broad-based BEE across all sectors of the economy. The Codes specifically set about defining the seven measurable scorecard elements.

These elements are:

- Ownership,
- Management,
- Employment Equity,
- Skills Development,
- Preferential Procurement,
- Enterprise Development
- Socio-Economic Development

In terms of the Codes of Good Practice on Broad-Based Black Economic Empowerment, the compliance requirements for B-BBEE varies according to the size of the entity, as measured by a company's annual turnover.

Broad-Based Black Economic Empowerment is measured using seven pillars, each with a relative weighting. Unlike Narrow Based Empowerment, Ownership & Management account for only 30% of the total contribution.

- Direct Empowerment:
 - o Equity Ownership – 20%
 - o Management – 10%
- Indirect Empowerment:
 - o Employment Equity – 15%
 - o Skills Development – 15%
 - o Preferential Procurement – 20%
 - o Enterprise Development – 15%
 - o Socio-economic Development – 5%

If a company's annual turnover is less than R5 million per annum, such an enterprise is classified as an Exempt Micro Enterprise (EME), which means it is classified as a Level 4 or Level 3 Contributor

to B-BBEE. The company's clients can claim at least 100% of their procurement spent with the company.

Should a company's turnover be between R5 million and R35 million per annum it is classified as a Qualifying Small Enterprise (QSE). Although the scorecard consists of seven sections, these entities are only measured on the best four towards their own B-BBEE scorecard.

Companies with a turnover of over R35 million per annum need to comply with the Generic scorecard, which consists of seven sections. The company specific information is tested against the various criteria in each section.

It is not mandatory to get a verification agency to audit a BEE Scorecard. It is however a requirement to have suitable documentation/evidence to score any points. SANAS (South African National Accreditation System) has been mandated with accrediting the Verification Agencies. This accreditation has been put in place in order to ensure the consistency of the independent verification of B-BBEE contributions. BEE Certificates can be issued by any Verification Agency so long as they are approved to do so by SANAS. The Certificate can only be issued once a full verification has been performed and the documentation presented by a company has been verified.

On the certificate, the following information should be listed:

- Company name and number
- Type of Certificate (Group/Entity/Division)
- BEE Category (EME/QSE/Generic)
- BEE Level (1-8)
- Procurement Recognition %
- Black Ownership %
- Black Women Ownership %
- Value Adding Supplier (Yes/No)
- Certificate Issue Date
- Certificate Expiry Date

No additional information is required to be provided to a business' customers. A BEE Certificate is sufficient evidence of a business' B-BBEE Compliance. At this point, it is worth noting that the revised Preferential Procurement Regulations relating to the Preferential Procurement Policy Framework Act came into effect in December 2011. The Regulations stipulate the use of an organisation's B-BBEE Scorecard level in evaluating B-BBEE performance for government contracts. This is in contrast to the narrow-based focus of BEE used in the previous version of the Regulations.

The revised preferential procurement regulations of 2011 align the PPPFA and B-BBEE Act through:

- Adopting the B-BBEE Act's definition of a black person
- Adopting the B-BBEE Act's classification of companies into the following categories:
 - o Exempted Micro Enterprises (EMEs) - A micro enterprise with an annual revenue of R5 million or less.
 - o Qualifying Small Enterprises (QSEs) - An enterprise with an annual turnover of between R5 million and R35 million.
 - o Generic - All companies with an annual turnover of above R35 million.
- Using the B-BBEE Act's Codes of Good Practice to measure B-BBEE.
- Using the B-BBEE Act's gazetted sector codes.

Further, the regulations retain the 80/20 and 90/10 preference point systems. However, the 80/20 system will apply to procurement of up to R1 million while the 90/10 system will apply to procurement exceeding R1 million. Moreover, in the 80/20 system, 80 points will go toward price while 20 points will go toward B-BBEE. Similarly, in the 90/10 system, 90 points will go toward price while 10 points will go toward B-BBEE.

2.1.7. Competition Act (as amended by the Competition 2nd Amendment Act)¹⁸

The purpose of this Act is to promote and maintain competition in the Republic in order –

- to promote the efficiency, adaptability and development of the economy;
- to provide consumers with competitive prices and product choices;
- to promote employment and advance the social and economic welfare of South Africans;
- to expand opportunities for South African participation in world markets and recognise the role of foreign competition in the Republic;
- to ensure that small and medium-sized enterprises have an equitable opportunity to participate in the economy; and
- to promote a greater spread of ownership, in particular to increase the ownership stakes of historically disadvantaged persons.

This Act applies to all economic activity within, or having an effect within, the Republic. The Competitions Act prohibits two types of practices. The first relates to practices that restrict competition. The second to any practice that abuses a dominant position.

¹⁸ Competition Act 1999 as amended by the 2nd amendment Act 2000:

2.1.7.1. Practices that Restrict Competition – Horizontal Practices

Practices which restrict competition can be divided into two categories. The categories deal with the relationship between a company and its markets. The first type of category is that relating to horizontal relationships. A horizontal relationship is a relationship between competitors in a market.

A horizontal relationship is presumed to exist between two firms if;

- any one of those firms owns a significant interest in the other or,
- if the firms have at least one director in common or,
- if the firms have at least one substantial shareholder in common,
- The above presumptions do not apply to a company and its wholly owned subsidiaries or to an economic entity having a similar structure.

The following horizontal practices are prohibited outright, and do not require any effect on competition to be proven.

- Directly or indirectly fixing a purchase or selling price or any other trading condition.
- Dividing markets by allocating customers, suppliers, territories, or specific types of goods or services.
- Collusive tendering.

In addition, an agreement between firms is prohibited, if the agreement has the effect of substantially preventing, or lessening, competition in a market unless it can be proven that a technological, efficiency or other pro-competitive gain outweighs the anti-competitive effect of that agreement.

2.1.7.2. Practices that Restrict Competition – Vertical Practices

A vertical relationship is defined as being a relationship between a firm and its suppliers or customers or both. Note that such a relationship does not extend to a relationship between competitors.

- This part of the Act prohibits the practice of resale price maintenance outright. There is no defense to this practice. In other words, any practice that attempts to hinder or prevent proper price competition for products or services in a market is prohibited.
- In addition, any agreement that has the effect of substantially preventing or lessening competition in a market is prohibited unless it is proven that a technological, efficiency or other pro-competitive gain outweighs the anti-competitive effect of that agreement.

2.1.7.3. *Abuse of a Dominant Position*

A firm is dominant if it possesses the ability to act independently of its customers, suppliers or competitors. If a firm is dominant, it may not;

- charge an excessive price to the detriment of consumers (no competitive effects required);
- refuse to give a competitor access to an essential facility when it is economically feasible to do so (no competitive effects required);
- engage in any of the following acts that impede or prevent a firm from entering into or expanding within a market unless the competitive effect is on balance pro-competitive (onus on defendant to prove pro-competitive effects):-
 - require or induce a supplier or customer to not deal with a competitor;
 - refuse to supply scarce goods to a competitor when supplying those goods is economically feasible;
 - engage in conditional selling unrelated to the object of a contract;
 - force a buyer to accept conditions unrelated to the object of a contract;
 - sell goods or services at below their marginal or average variable cost;
 - buy up a scarce supply of intermediate goods or resources required by a competitor;
 - engage in any act other than those listed above, that impedes or prevents a firm from entering into, or expanding within a market and which act on balance has a provable anti-competitive effect (complainant must prove anti-competitive effects);

It should be noted that the onus of proof regarding competitive effects varies, depending on the particular prohibition. This is very important because of the presumption regarding proof and who has to prove the competitive effects.

2.1.7.4. *Price Discrimination*

The action of a dominant supplier, as a seller of goods or services is prohibited if;

- it is likely to have the effect of substantially preventing or lessening competition;
- it relates to the sale of goods or services of like grade and quality, in equivalent transactions, to different purchasers and it involves discriminating between those purchasers by way of price, discount, allowance, rebate or credit, the provision of services or payment for services provided in connection with the goods or services sold.
- The dominant supplier is then given a “get out of jail free” card. If the supplier can prove any of the following, price discrimination is not a prohibited action if;
 - only reasonable allowance is made for differences in cost or the likely cost of manufacture, distribution, sale, promotion or delivery that result from the differing places to which, methods by which or quantities in which the goods or services are supplied to different purchasers or;

- in good faith, the discrimination is effected in order to meet a price or benefit offered by a competitor or;
- it is in response to changing conditions affecting the market for the goods or services, including factors such as responses to actual or imminent deterioration of perishable goods, responses to the obsolescence of goods, liquidation sales or sales in good faith as a consequence of the cessation of the business in that good or service.

2.1.7.5. **Market Power & Dominance**

The Act uses the language of competition. It focuses on the power of the firm to control markets. Since dominance can only be present within a market, market definitions are crucial. A large firm may be dominant in some markets within its product range, but not so in others. Simple factors such as grade and quality may differentiate markets. Equally, geographical considerations may do the same. An analysis of market power is therefore crucial at all levels of product. Such an analysis should form part of each annual product review. Within the greater strategic context, divisional analysis of potential competition contraventions would be a sound and worthwhile practice.¹⁹

2.1.8. **The Labour Relations Act (1995)**

This Act regulates the organisational rights of trade unions and promotes and facilitates collective bargaining at the workplace and at sectoral level. It also deals with strikes and lockouts, workplace forums and alternative dispute resolution. It also establishes the CCMA, Labour Court and Labour Appeal Court as superior courts, with exclusive jurisdiction to decide matters arising from the Act.

It is the Act's purpose:

- to give effect to section 27 of the Constitution²⁰;
- to regulate the organisational rights of trade unions;
- to promote and facilitate collective bargaining at the workplace and at sectoral level;
- to regulate the right to strike and the recourse to lock-out in conformity with the Constitution.
- to promote employee participation in decision-making through the establishment of workplace forums;
- to provide simple procedures for the resolution of labour disputes through statutory conciliation, mediation and arbitration (for which purpose the Commission for Conciliation,

¹⁹*Purposes and Aims of the Competition Act*: Comphep Antitrust and Unfair Monopoly Competition Help. 2004. Jim Foot, Nationwide Poles

²⁰Section 27, which is in the Chapter on Fundamental Rights in the Constitution entrenches the following rights: Every person shall have the right to fair labour practices. Workers shall have the right to form and join trade unions, and employers shall have the right to form and join employers' organisations. Workers and employers shall have the right to organise and bargain collectively. Workers shall have the right to strike for the purpose of collective bargaining.

Mediation and Arbitration is established), and through independent alternative dispute resolution services accredited for that purpose;

- to establish the Labour Court and Labour Appeal Court as superior courts, with exclusive jurisdiction to decide matters arising from the Act;
- to provide for a simplified procedure for the registration of trade unions and employers' organisations, and to provide for their regulation to ensure democratic practices and proper financial control;
- to give effect to the public international law obligations of the Republic relating to labour relations;
- to amend and repeal certain laws relating to labour relations; and
- to provide for incidental matters. ²¹

2.1.9. Consumer Protection Act (2008)

The Consumer Affairs (Unfair Business Practices) Amended Act no 21, 2001 was established in order to provide for the prohibition or control of certain business practices and for matters connected therewith. The Act was repealed in terms of section 121 of the Consumer Protection Act, 2008. ²²

The Act came into effect on 31 March 2011. It sets out the minimum requirements to ensure adequate consumer protection in South Africa. This Act constitutes an overarching framework for consumer protection, and all other laws which provides for consumer protection (usually within a particular sector) will need to be read with this Act to ensure a common standard of protection.

The purpose of the Act is to promote a fair, accessible and sustainable marketplace for consumer products and services and for that purpose to:

- establish national norms and standards relating to consumer protection,
- to provide for improved standards of consumer information,
- to prohibit certain unfair marketing and business practices,
- to promote responsible consumer behaviour,
- to promote a consistent legislative and enforcement framework relating to consumer transactions and agreements,
- to establish the National Consumer Commission,
- to repeal, inter alia, the Consumer Affairs (Unfair Business Practices) Act. ²³

²¹The Labour Relations Act 66 of 1995 (Amended by Labour Relations Amendment Act, No 42 of 1996 Proclamation, No 66 of 1996, Labour Relations Amendment Act, No 127 of 1998, Labour Relations Amendment Act, No 12 of 2002)

²²Consumer Protection Act, No 68. 2008. Government Gazette 32186

²³Consumer Protection Act, No 68. 2008. 2009. Government Gazette 32186

All suppliers of goods and services will need to take note of the new measures and ensure that they are able to comply. Chapters 1 and 5 of this Act, section 120 and any other provision authorising the Minister to make regulations became effective one year after the signing of the Act by the President, which was 24 April 2010.

The Minister of Trade and Industry has given notice on 14 March 2011 in the Government Gazette that the Consumer Protection Act application to municipalities, other than high capacity municipalities, will be deferred until further notice. This will have the implication that consumers cannot apply the protection of the Act to transactions with these municipalities.

The Minister also gave notice on 27 June 2011 in the Government Gazette on the following exemptions:

- banks will be exempt from section 14 of the Act which deals with the expiry and renewal of fixed term agreements;
- the Pension Fund Industry will be exempt from certain sections of the Act for a period of 18 months from 1 April 2011;
- the Collective Investment Scheme Industry will be exempt from certain sections of the Act for a period of 18 months from 1 April 2011;
- the Security Services Industry will be exempt from certain sections of the Act indefinitely.²⁴

The Minister of Trade and Industry has in terms of S120 (1) of the Consumer Protection Act, 2008 published the Consumer Protection Act Regulations in the Government Gazette No. 34180 dated 1 April 2011. The Regulations provides information regarding following:

- dates and times that consumers may not be contacted for direct marketing purposes;
- product labelling and trade description requirements for certain textiles, clothing, shoes and leather goods;
- information to be disclosed by an intermediary as well as the records to be kept;
- reporting and record-keeping requirements for promotional competitions, as well as requirements regarding the fees to be charged where the competition is entered by SMS or MMS that exceeds the normal fee payable on the network;
- advertising of auctions in a manner that the general public has had an opportunity to become aware of the auction;
- detail regarding franchise agreements;
- the maximum period that a fixed term contract can be agreed on and the maximum cancellation fee that can be charged.²⁵

²⁴ The Consumer Protection Act. Theron Auctioneers™ 2012. <http://theronauctioneers.co.za/consumersprotection-act>

2.1.10. The Industrial Development Amendment Act (2001)

The purpose of the Act is to amend the Industrial Development Act, 1940, so as to adjust and add to the objects and powers of the Industrial Development Corporation of South Africa, Limited; to extend the activities of the corporation beyond the borders of the Republic for the benefit of the Southern African region specifically and the rest of Africa generally; to empower the managing director to delegate his or her powers to other structures of the corporation; and to repeal obsolete provisions; and to provide for matters connected therewith.²⁶

Some amendments to Act 22 of 1940 include amendments to Section 3 by the addition of the following paragraphs, which emphasise the government's commitment to the promotion of economic empowerment and the advancement of SMEs:

- to promote the economic empowerment of the historically disadvantaged communities and persons;
- to foster the development of small and medium enterprises and Co-operatives;
- to promote employment-creating activities, particularly in underdeveloped areas;
- to leverage foreign direct investment in South Africa, the Southern African region and the rest of Africa through the use of its international network and presence;
- to encourage the creation of new knowledge-based industries and services and the establishment and growth of new technology-based firms; and
- to enhance corporate governance so as to achieve business excellence.

The amendments to Section 4 of Act 22 of 1940 provides for the following:

- to implement procurement and outsourcing policies and programmes that encourage economic empowerment;
- to consider investment proposals in large beneficiation projects such that the viability of mid- and downstream manufacturing activities is ensured;
- to develop and appraise large investment projects in securing foreign partners to co-invest in such projects;
- to promote viable strategic investment projects in spatial development initiatives and industrial development zones as part of the government's industrial and integrated rural development strategies;
- to provide venture capital finance and services;

²⁵Consumer Protection Act, No 68. 2008 Regulations. 2011. Government Gazette 34180

²⁶The Industrial Development Amendment Act no. 49 of 2001. 2001. Government Gazette 22916

- to assist South African exporters and importers of capital goods and services through extended credit facilities.²⁷

2.1.1.1. The International Trade Administration Act (2002)

The aim and purpose of the trade administration Act is to establish the International Trade Administration Commission; to provide for the functions of the Commission and for the regulation of its procedures, to provide for the implementation of certain aspects of the Southern African Customs Union (SACU) Agreement in the Republic, as well as to provide, within the framework of the SACU Agreement, for continued control of import and export of goods. It also aims to amend customs duties and to provide for matters connected therewith.²⁸

The objective of the Act is to foster economic growth and development in order to raise incomes and promote investment and employment in the Republic and within the Common Custom Area by establishing an efficient and effective system for the administration of international trade subject to this Act and the SACU agreement.

As mentioned, the Act provided for the establishment of SACU. The Southern African Customs Union (SACU) consists of Botswana, Lesotho, Namibia, South Africa, and Swaziland. The SACU Secretariat is located in Windhoek, Namibia. SACU was established in 1910, making it the world's oldest Customs Union. Historically SACU was administered by South Africa, through the 1910 and 1969 Agreements. The customs union collected duties on local production and customs duties on members' imports from outside SACU, and the resulting revenue was allocated to member countries in quarterly instalments utilizing a revenue-sharing formula. Negotiations to reform the 1969 Agreement started in 1994, and a new agreement was signed in 2002. The new arrangement was ratified by SACU Heads of State. Its mission is to serve as an engine for regional integration and development, industrial and economic diversification, the expansion of intra-regional trade and investment, and global competitiveness.

The Economic structure of the Union links the Member states by a single tariff and no customs duties between them. The Member States form a single customs territory in which tariffs and other barriers are eliminated on substantially all the trade between the Member States for products originating in these countries; and there is a common external tariff that applies to non-members of SACU.

²⁷The Industrial Development Amendment Act no. 49 of 2001. 2001. Government Gazette 22916

²⁸International Trade Administration Act, No. 71 of 2002. 2003. Government Gazette 24287

The 2002 SACU Agreement addressed the following three outstanding issues.

1. Joint decision making processes: Article 3 established an independent Administrative Secretariat to oversee SACU with its headquarters in Windhoek, Namibia. Article 7 created several independent institutions including a Council of Ministers, a Customs Union Commission, Technical Liaison Committees, a SACU Tribunal and a SACU Tariff Board. These institutions are designed to enhance equal participation by member states. The 2002 Agreement also provides for policy coordination in agriculture, industry, competition, and unfair trade practices, and protection of infant industries.
2. New Revenue Sharing Formula: Revision of the RSF to include a customs excise and development component.
3. Question of external (outside SACU) trade: the need to develop strategies that enhance the political, economic, social, and cultural integration of the region without jeopardizing the economies of the smaller states.²⁹

2.1.12. Close Corporations Amendment Act (2001)

The Close Corporations Amendment Act (No. 22 of 2001) was implemented to amend the Close Corporations Act 69, 1984, so as to allow the electronic lodgement of and access to all documents which have been or are required to be lodged in terms of that Act; to provide for the payment of fees in respect of documents so lodged; to allow the Registrar to amend registration numbers; and to amend an obsolete provision; and to provide for matters connected therewith.³⁰

The Close Corporations Act, No. 69 of 1984, was enacted by Parliament in June 1984. Certain amendments to the principal Act were made, inter alia, in Close Corporation Amendment Acts No. 38 of 1986, No. 64 of 1988, No. 17 of 1990, No. 81 of 1992 and No. 26 of 1997, No 22 of 2001, the Judicial Matters Amendment Act, No 16 of 2003 and the Corporate Laws Amendment Act, No 24 of 2006. The Act was also amended in 2011 with the Companies Act, No 71 of 2008 (See 2.1.1. above), Schedule 3 in its amendment of laws section.

The Companies Act, 2008 has changed the regulatory framework applicable to close corporations. The requirements of the Companies Act to calculate the public interest score to determine whether the company is required to be audited is now also applicable to a close corporation. Close corporations meeting the requirements to be audited would also need to apply the Financial Reporting Framework as set out in the Companies Regulations.

²⁹ SACU website. 2007. <http://www.sacu.int/about.php?id=394>

³⁰ *Close Corporations Amendment Act 22 Of 2001*. 2001. Government Gazette 22740

The Companies Act, 2008 also prohibited the registration of any new close corporation after 1 May 2011. Close corporations can be converted to companies, but companies can no longer be converted to close corporations. Due to the name reservations being valid, close corporations continued to be registered after 1 May 2011. During December 2011 the CIPC however informed the public that no new close corporations would be registered after 22 December 2011. Existing close corporations would be administered under the Close Corporations Act, 1984 indefinitely. Should close corporations wish to convert to a company this can be done free of charge until 30 April 2014.

The overriding intention of the Close Corporations Act is to provide a means of conducting business through a less complex and more easily administered legal entity than a company formed in terms of the Companies Act. The administrative complexities associated with a company are avoided, making a close corporation simpler and less expensive to operate.

The Close Corporations Act is designed to fulfil three basic criteria, namely:

- simplicity
- flexibility, and
- the ability of members to participate in the management and control of the business.

A feature of the Close Corporations Act is that it is intended to be largely self-regulating and members may lose their limited liability and may become jointly and severally liable for the close corporation's debts if they transgress certain provisions of the Act.³¹

Any future changes to a close corporation would still have to be made in terms of the Close Corporations Act for the following:

- CC amendments
- Letter for accounting officer resignations
- Liabilities exceed assets letters
- Annual returns

The following processes will be administered in terms of the new Companies Act of 2008:

- Name Reservations
- Liquidations
- Deregistration

³¹The Close Corporations Act, No. 69 of 1984. SAICA. 2011. www.saica.co.za

- Restoration – normal restorations and annual returns

All Close Corporations are monitored by the Registrar of Close Corporations and they will have to obey the rules and regulations outlined in the Close Corporation Act. These refer to, inter alia:

- Regulations pertaining to documents lodged with the Registrar or Registration Office, such as the form it should be written in, as well as inspection of documents;
- The payment of fees;
- Preservation and retention of records;
- Registration of amended founding statements: When any changes are made in respect of a registered close corporation, it is necessary to notify the Close Corporation Registration Office.
- Annual Returns: An annual return is a summary of the most relevant information pertaining to a company and close corporation. By lodging annual returns companies and close corporations ensure that the CIPC is in possession of the latest information. It also confirms that the company and close corporation is still in business or will be doing business in the near future. All companies (including external companies) and close corporations are required by law to lodge their annual returns with CIPC (previously CIPRO) within a certain period of time every year. An annual return is a statutory return in terms of the Companies and Close Corporations Acts and therefore must be complied with. Failure to do so will result in the Commission assuming that the company and/or close corporation is not doing business or is not intending on doing business in the near future. Non-compliance with annual returns may lead to deregistration, which has the effect that the juristic personality is withdrawn and the company or close corporation ceases to exist.
- The appointment of accounting officers: The Companies and Intellectual Property Commission (CIPC) recognises various accounting professions for purposes of appointment as accounting officers in terms of the CC Act, 1984, which include: SAICA, CA, ICOSA, etc.
- Deregistration and Liquidation: In the lifecycle of the CC, it may cease to operate and wish to be deregistered or it may be “dissolved” as a result of liquidation. These situations are usually complicated and technical and specialist information should be sought. Liquidation and deregistration are not the same thing. Liquidation implies that the business is not able to pay its debts. Liquidation further implies that the business will cease to operate (generally as a result of financial problems). Deregistration implies that a business may choose to deregister (e.g. cease to be registered as a CC) and is able to pay its debts. The business can continue in a different form e.g. as a sole proprietor after the deregistration.
- Reinstatement of a CC: Once a CC has been deregistered, an application can be made to have it re-instated, provided that the status of the CC has been confirmed with the office, as

an application may have been lodged by the South African Revenue Service for the CCs deregistration.

- Business rescue: All businesses that are financially distressed and want to take a decision to start rescue proceedings can file notices prescribed in the Act. Chapter 6 of the Companies Act 2008 (Act 71 of 2008) provides for the efficient rescue and recovery of financially distressed companies, in a manner that balances the rights and interests of all relevant stakeholders.³²

2.1.13. The Co-operatives Act (2005)

The Co-operatives Act, No 14 of 2005 was signed by the President on the 18 August 2005 and gazetted in Gazette No. 27912. This Act replaces the Co-operatives Act, No 91 of 1981 which was repealed by Section 98(1) of the Co-operatives Act, No 14 of 2005. The objectives of the Act are to uphold the values of self-help, self-reliance, self-responsibility, democracy, equality and social responsibility.

The purpose of the Act is to:

- promote the development of sustainable Co-operatives that comply with Co-operative principles, thereby increasing the number and variety of economic enterprises operating in the formal economy;
- encourage persons and groups who subscribe to values of self-reliance and self-help, and who choose to work together in democratically controlled enterprises, to register Co-operatives in terms of this Act;
- enable such Co-operative enterprises to register and acquire a legal status separate from their members;
- promote equity and greater participation by black persons, especially those in rural areas, women, persons with disability and youth in the formation of, and management of, Co-operatives;
- establish a legislative framework that preserves a Co-operative as a distinct legal entity;
- facilitate the provision of support programmes that target emerging cooperatives, specifically those Co-operatives that consist of black persons, women, youth, disabled persons or persons in the rural areas and that promote equity and greater participation by its members;
- ensure the design and implementation of the Co-operative development support programmes by all the agencies of national departments including but not limited to NEF, NPI, SEDA, IDC, SAQI, SABS, CSIR, PIC, DBSA, SALGA and SETA's, and compliance with uniform norms and standards prescribed by this Act;

³²Close Corporations: Companies and Intellectual Property Commission.2011.

- ensure the design and implementation of the Co-operative support measures across all spheres of government, including delivery agencies, and adherence to a uniform framework of established norms and standards that reflect fairness, equity, transparency, economy, efficiency, accountability and lawfulness; and
- facilitate the effective co-ordination and reporting mechanism across all spheres of government through the department.³³

A simple definition of a Co-operative is a business where a group of people get together voluntary to obtain a product or service. From this one can see that the members must do business with the Co-operative. For example the Co-operative could buy in bulk the inputs the members need to produce a certain product (e.g. flour to bake bread and cakes). The members then produce the product and the Co-operative market sells it on their behalf (e.g. the bread and cakes are sold to the public by the Co-operative). A Co-operative is a distinct form of enterprise that provides services and/or products to its members. Profits, known as surpluses in a Co-operative, are divided among members in relation to the amount of the business each member did with the Co-operative.

Characteristics of a Co-operative are:

- Association of persons
- Voluntary basis
- Mutual or common economic, social and cultural needs
- Jointly owned and democratically controlled enterprise
- Co-operative principles

The principles of a Co-operative

- Democratic member control
- Voluntary and open membership
- Autonomy and independence
- Educational training and information
- Co-operation among Co-operatives
- Concern for community
- Member economic participation

The benefits of a Co-operative is that a group may achieve what one cannot achieve on his/her own, while providing easy access to needed services. Co-ops pay less for inputs, marketing, distribution and selling of produce and are able to process products if necessary.

³³The Co-operatives Act, No 14 of 2005. Government Gazette 27912

2.1.14. The Skills Development Amendment Act (2008)

The Skills Development Act, as amended in 2003 as well as in 2006 for the proposed amendments to SETAs, aims to develop the skills of the South African workforce and to improve the quality of life of workers and their prospects of work. Its goal is to improve productivity in the workplace and the competitiveness of employers and to promote self-employment.

The purposes of the Act are:

- to develop the skills of the South African workforce –
 - to improve the quality of life of workers, their prospects of work and labour mobility;
 - to improve productivity in the workplace and the competitiveness of employers;
 - to promote self-employment; and
 - to improve the delivery of social services
- to increase the levels of investment in education and training in the labour market and to improve the return on that investment;
- to encourage employers –
 - to use the workplace as an active learning environment;
 - to provide employees with the opportunities to acquire new skills;
 - to provide opportunities for new entrants to the labour market to gain work experience; and
 - to employ persons who find it difficult to be employed;
- to encourage workers to participate in learnership and other training programmes;
- to improve the employment prospects of persons previously disadvantaged by unfair discrimination and to redress those disadvantages through training and education;
- to ensure the quality of education and training in and for the workplace;
- to assist work-seekers to find work;
 - retrenched workers to re-enter the labour market;
 - employers to find qualified employees; and
- to provide and regulate employment services.
- Those purposes are to be achieved by establishing an institutional and financial framework comprising –
 - the National Skills Authority;
 - the National Skills Fund;
 - a skills development levy-financing scheme as contemplated in the Skills Development Levies Act;
 - SETAs;

- o labour centres; and
- o the Skills Development Planning Unit;
- encouraging partnerships between the public and private sectors of the economy to provide education and training in and for the workplace; and
- co-operating with the South African Qualifications Authority.³⁴

As per the abovementioned Act, a skills fund exists and an employer must pay the Skills Development Levy or SDL if the employer pays annual salaries, wages and other remuneration in excess of R500 000. Employers with an annual payroll of R500 000 or less (whether registered for employees tax purposes with SARS or not) are exempt from this levy.

This levy (currently 1%) is used for the funding of education and training of employees. It is calculated as a percentage of a leviable amount, which is approximately equal to the earnings of all the employees. The application form to register for SDL is the same form that is used to register for employees' tax (EMP101). The monthly return for SDL is combined with the monthly return for employees' tax (EMP201) which means that the same terms and conditions apply for submission and payment.³⁵

The following employers are exempt from paying the SDL —

- Any public service employer in the national or provincial sphere of Government. (These employers must budget for an amount equal to the levies payable for training and education of their employees).
- Any national or provincial public entity if 80% or more of its expenditure is paid directly or indirectly from funds voted by Parliament. (These employers must budget for an amount equal to the levies payable for training and education of their employees).
- Any public benefit organisation, exempt from the payment of income tax in terms of Section 10(1)(cN) of the SDL Act, which solely carries on certain welfare, humanitarian, health care, religion, belief or philosophy public benefit activities or solely provides funds to such a public benefit organisation and to whom a letter of exemption has been issued by the SARS Tax Exemption Unit.
- Any municipality in respect of which a certificate of exemption is issued by the Minister of Labour.³⁶

³⁴The Skills Development Amendment Act No. of 2008. Government Gazette 31666

³⁵SARS Tax Guide for Small Businesses 2011/2012: Legal and Policy Division of SARS. 2012

³⁶Guide For Employers In Respect Of Employees' Tax (2012 Tax Year): Legal and Policy Division of SARS. 2011

Although these employers are exempt from the payment of the levy, they are not absolved from registration. An employer is only not required to register as an employer for SDL purposes if there are during any month reasonable grounds for believing that the total leviable amount paid or payable by that employer to all its employees during the following 12 month period will not exceed R500 000 even though such employer is liable to register with SARS for Employees' Tax purposes.³⁷

As mentioned earlier, SARS made changes to the EMP201 process in order to align with changes made to the reconciliation process. The EMP201 has been enhanced to show the allocation of the payments made, where the previously declaration was a payment and liability declaration. The EMP201 will now be the payment declaration in which the employer declares the total payment together with the allocations for Pay-As-You-Earn (PAYE), Skills Development Levy (SDL) and Unemployment Insurance Fund (UIF) respectively.

Employers will no longer be required to complete both a payment liability and a payment declaration on an EMP201. The EMP201 is an employer payment declaration that requires employers to indicate the total payment made and give a breakdown of PAYE, SDL and UIF payment allocations. In the case of NIL declarations, a declaration must be made to SARS reflecting the nil amounts. This means that employers will only make one payment as opposed to three separate payments for PAYE, SDL and UIF. The EMP201 will therefore be used for a single period to declare how that payment must be allocated for each tax type.³⁸

2.1.15. The Unemployment Insurance Contributions Act (2002)

The unemployment insurance fund contributions (UIF contributions) insure employees against the loss of earnings due to termination of employment, illness and maternity leave. In terms of the Unemployment Insurance Contributions Act, No 4 of 2002, both the employer and the employee have to make a contribution to the Unemployment Insurance Fund. The contributions made by each of them are calculated as 1% of the gross remuneration (before the deduction of pension fund, retirement fund and qualifying medical aid contributions) paid or payable by the employer to the employee for services rendered.

An employer who is registered for employees' tax and/or the skills development levy (SDL) will be automatically registered for UIF contributions with SARS. (The application form to register for UIF contributions is the same form that is used to register for PAYE and/or SDL.)

³⁷ Ibid.

³⁸ A guide to the Monthly Employer Declaration (EMP201) process. SARS Communication 2012

An employer who is not liable for the payment of employees' tax and/or SDL must register for UIF purposes with the Unemployment Insurance Commissioner at the Department of Labour. The maximum earnings on which UIF contributions may be calculated have been increased to R149 736 per annum, R12 478 per month or R2 879-53 per week with effect from 1 February 2008.

Employees who earn more than the annual, monthly or weekly maximum amount indicated above are also liable to contribute to the UIF, but contributions payable are limited to an amount calculated on the relevant maximum earnings as reflected above. Note must be taken of the following where an amount of an employee's contribution which has been deducted by an employer which is a company (other than a listed company) has not been paid over to the Commissioner or the Unemployment Insurance Commissioner, the representative employer and every director and shareholder of that company who controls or is regularly involved in the management of the company's overall financial affairs, will be personally liable for the payment of that amount to the Commissioner or the Unemployment Insurance Commissioner and for any penalty which may be imposed in respect of that payment.³⁹

Employers are every month, by not later than the 7th of the month, required to furnish the UIF with details of all their employees as defined by the Unemployment Insurance Act, which excludes non-natural persons and independent contractors. These details are added to the UIF Employee Database in order to maintain a record of each employee's employment history, which will form the basis for the payment of benefits in terms of section 57 (2) of the Unemployment Insurance Act 63, 2001. It is worth noting that the details of all employees, as defined in terms of the Unemployment Insurance Act are required every month, irrespective of whether they are contributors or non-contributors. Reason codes for non-contributors have been provided in these specifications.⁴⁰

As mentioned previously (see Income Tax Act), SARS made changes to the EMP201 process in order to align with changes made to the reconciliation process. The EMP201 has been enhanced to show the allocation of the payments made, where the previously declaration was a payment and liability declaration. The EMP201 will now be the payment declaration in which the employer declares the total payment together with the allocations for Pay-As-You-Earn (PAYE), Skills Development Levy (SDL) and Unemployment Insurance Fund (UIF) respectively.

Employers will no longer be required to complete both a payment liability and a payment declaration on an EMP201. The EMP201 is an employer payment declaration that requires employers to indicate

³⁹ *The Unemployment Insurance Contributions Act No. 4 of 2002. Government Gazette 23289*

⁴⁰ *UIF Electronic Declaration Specifications Version E03. 2002. Dept. of Labour*

the total payment made and give a breakdown of PAYE, SDL and UIF payment allocations. In the case of NIL declarations, a declaration must be made to SARS reflecting the nil amounts. This means that employers will only make one payment as opposed to three separate payments for PAYE, SDL and UIF. The EMP201 will therefore be used for a single period to declare how that payment must be allocated for each tax type.⁴¹

2.1.16. Occupational Health and Safety Act (1993)

The aim of this 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.⁴²

2.1.17. Compensation for Occupational Injuries and Diseases Amendment Act (1997)

The purpose of the Act is to amend the Compensation for Occupational Injuries and Diseases Act, 1993, so as to define, substitute or delete certain expressions; to transfer certain functions to the Director-General and to make the Director-General accountable for the compensation fund.

The Act also aims:

- to allow the Director-General to delegate his or her powers;
- to alter the commissioner's functions;
- to provide for the payment of compensation to assessor's dependants;
- to further regulate the composition of the Compensation Board;
- to remove the duty on employers to provide first aid;
- to further regulate the assessment of employers;
- to provide for the payment of interest on overdue assessments;
- to further regulate objections and appeals against decisions of the Director-General;
- to provide that the Minister must consult with the Compensation Board before he or she makes regulations;
- to further regulate the manner in which compensation is calculated and
- to effect certain textual alterations and to provide for matters connected therewith.⁴³

⁴¹A guide to the Monthly Employer Declaration (EMP201) process. SARS Communication 2012

⁴²Occupational Health and Safety Act no. 85 of 1993

⁴³Compensation for Occupational Injuries and Diseases Amendment Act 61, 1997. Government Gazette 18430

As per the regulations of the Act, employers are required to pay into the Compensation Fund once a month. Workers do not pay anything to the Fund. Employers cannot deduct money from workers' wages as contributions to the Fund either.

Occupational diseases are illnesses caused by substances or conditions that the worker was exposed to at the workplace. One can claim compensation if one is exposed to these working conditions and then get the related disease. The working conditions and diseases caused by these conditions that are covered by the Compensation Fund are set out in Schedule 3 of the Act. A person can claim for other disease if you can prove using medical evidence and reports that the disease was caused by conditions at work. The Fund also covers injuries that were sustained as a result of work or at the workplace.⁴⁴

There are five kinds of compensation:

- Temporary disability
- Permanent disability
- Death
- Medical expenses
- Additional compensation

The Compensation Fund covers workers who:

- were hurt in an accident while they were busy with their work
- contracted a disease through their work
- died from a workplace accident or occupational disease.

A person may claim if he/she was injured or contracted a disease while

- working (permanent or casual)
- training
- completing an apprenticeship

There are certain categories of worker who cannot claim from the fund. For example, one cannot claim if one is:

- a domestic worker employed at a private home
- a member of the South African National Defence Force (there is a separate fund)
- a member of the South African Police Services (there is a separate fund)
- a worker who doesn't work under the control of your employer

⁴⁴ Claiming Compensation for Occupational Injury or Diseases: Dept. of Labour

- a worker who works outside South Africa for more than 12 months at a time.

A person may, however claim, if he/she is:

- a domestic worker in a boarding house
- an apprentice or trainee farm worker
- a worker paid by a labour agency.

Claims will only be paid if they are submitted in the correct way in the proper time. Claims will not be paid if:

- The claim is made more than 12 months after the accident or death, or after the disease is diagnosed.
- The injured person is off work for 3 days or less.
- The accident resulted from a person's own wrong doing (unless the worker is seriously disabled or dies in the accident, then the Fund will still pay compensation).
- The injured person unreasonably refuses to have medical treatment.

2.1.18. The Corporate Laws Amendment Act (2006)

The Corporate Laws Amendment Act, Act No 24 of 2006, was promulgated in its entirety without amendment on 14 December 2007.

The Amendment Act's principal provisions impact on:

- the auditing and accounting requirements for companies;
- the prohibition on the provision by companies of financial assistance for the acquisition of their own shares;
- the requirements for a prospectus; and
- the requirement for shareholder approval for disposals by companies of their assets.⁴⁵

For accounting and auditing purposes, all companies will be classified as either "widely held" or "limited interest" companies, and any company that does not fall into the category of widely held companies will be a limited interest company. The purpose behind the new classification is the application of more stringent accounting and auditing requirements to widely held companies on the basis of the assumption that the broader public has a greater interest in the affairs of these companies.

A company will be classified as a widely held company if:

- its articles provide for an unrestricted transfer of its shares;

⁴⁵The Corporate Laws Amendment Act, Act No 24 of 2006. Government Gazette 29804

- it is permitted by its articles to offer its shares to the public;
- it decides by special resolution to be a widely held company; or
- it is a subsidiary of a widely held company.

Every widely held company is now obliged to appoint an audit committee for each financial year of the company, unless it is a subsidiary and its holding company's audit committee discharges the audit committee function for the subsidiary or it is exempted from this requirement by proclamation by the Minister of Trade and Industry in the Government Gazette. The audit committee then assumes the functions of the board with respect to the appointment, fees and terms of engagement of the auditor. ⁴⁶

The new Financial Reporting Standards Council as established in the Act is charged with establishing financial reporting standards for widely held companies (which must be in accordance with IFRS) and developing accounting standards (which are intended to be less onerous than the standards for widely held companies) for limited interest companies.

The publication of materially incomplete financial statements or financial statements which do not comply with the Companies Act as amended by the Amendment Act will constitute an offence by the company and every director or officer who is party to that publication. Any person who was party to the preparation, approval, publication, issue or supply of materially false or misleading financial statements or other financial reports will also be guilty of an offence if that person knows or ought reasonably to suspect that it is false or misleading. ⁴⁷

The Amendment Act alters the requirements for a prospectus to accompany an offer of shares to the public by providing that, in addition to the specifications of Schedule 3 to the Companies Act, the prospectus must contain "all information that an investor may reasonably require to assess:

- a) a company in which a right or interest is to be acquired, its assets and liabilities, financial positions, profits and losses, cash flow and prospects; and
- b) the shares and rights attached to them." ⁴⁸

The Act does allow the Registrar to grant an allowance to a company to omit information from the prospectus if the publication of such information would be needlessly onerous, very damaging or against the public interest and if users are not unduly prejudiced by such an omission.

⁴⁶The Corporate Laws Amendment Act, Act No 24 of 2006. Werkmans Legal Brief. 2008. G. Driver and H. Goolam

⁴⁷ Ibid

⁴⁸The Corporate Laws Amendment Act, Act No 24 of 2006. Government Gazette 29804

It is worth noting that the amendment to the Act enables it to afford greater protection to minority shareholders as it provides that the directors have no power to dispose of the whole or the greater part of the undertaking of a company or the whole or the greater part of the assets of the company unless the shareholders of the company have authorised such disposal by way of special resolution (75% majority). The Amendment Act closed a loophole in the Companies Act by requiring the approval of the shareholders of any holding company for a disposal by any of its subsidiaries that would constitute a disposal of the whole or greater part of the undertaking of the holding company or its assets.⁴⁹

2.1.19. The Liquor Act (2003) and Liquor Products Amendment Act (2008)

2.1.19.1. The Liquor Act (No. 59 of 2003)

The Liquor Act (No. 59 of 2003) came into effect on 13 August 2004. Before proclamation, provincial Liquor Authorities were responsible for the regulation of all the value chain categories of the Liquor Industry. The Act provides for the manufacturing and distribution of liquor to be regulated at national level while micro manufacturing and retailing continue to be regulated at provincial level. A new National Liquor Authority (NLA), housed in the Consumer and Corporate Regulation Division of **the dti**, is responsible for administration of the Act. The NLA will receive, evaluate and recommend to the Minister applications for national manufacturing and distribution licenses and related matters.

A National Liquor Policy Council, comprising the Minister of Trade and Industry and relevant Members of the Executive Council of the provinces, will formulate and co-ordinate policies and embody Co-operative governance.

An important aspect of the new Act is social responsibility. Those wishing to register must set out their commitment to black economic empowerment, and their proposed contribution to combating alcohol abuse, as well as how they will restrict or promote job creation, diversity of ownership, exports, competition, new entrants to the industry and efficiency of operation. Failing to meet these commitments can result in a review of or placing new conditions on registration.⁵⁰

2.1.19.2. Liquor Products Amendment Act(No. 32 of 2008)

Amendments to the Act relate to the following aspects of the Liquor Industry:

I. The Composition of the Wine and Spirit Board

The Minister shall, via publication in a national newspaper and the Gazette, call for nominations and thereafter, on recommendation of a selection committee, appoint the members of the board.

⁴⁹The Corporate Laws Amendment Act, Act No 24 of 2006. Werkmans Legal Brief. 2008. G. Driver and H. Goolam

⁵⁰ The National Liquor Act and Regulations. dti

2. Powder power

Powders, containing no alcohol as is and not sold for drinking purposes as such may be used by adding warm water, which once brewed creates a beverage containing a substantial alcohol content. Such products were sold at any outlet to any person, including children, and could not be checked to see if they were safe for human consumption. These types of products are now prohibited by the LP Act.

3. Requirements for wine

Currently wine (including distilling wine) can only be made from grapes of the species *Vitis Vinifera*. The amended LP Act gives authorisation that wine can be made from any grape from the genus *Vitis*, if so prescribed in the Regulations. It now also allows wine to be made from grape juice concentrate. These provisions will only come into operation if and once relevant regulations are published.

4. Lot-marking and gauging of tanks

The amended LP Act makes provision for the Regulations to make lot marking obligatory and to regulate the gauging and marking of containers used in the production and storage of liquor products.

5. Production and compositional requirements for cane spirit, rum and vodka

Above-mentioned were adjusted to reflect national and international practices.

6. Alcohol content in degrees proof

Alcohol content on labels may now be indicated in degrees proof. But, to avoid any confusion, it must be so indicated in addition to, together with and not more prominent than the traditional way of indication (% vol.).

7. Export certificates for NLBS countries

For the export of liquor products in consumer ready containers to Namibia, Lesotho, Botswana and Swaziland export certificates are no longer required.

8. Grape cultivars which may be used for the production of wine

The regulations now includes "Tinta Amarela", "Trincadeira" and "Trincadeira Preta" as synonyms for "Tinta Amarella". The new dispensation regarding the use of "Riesling" is also set out.

9. Sparkling wines

The amendments harmonise the requirements for sparkling wines with international standards and legislation by adding three new classes of sparkling wine ("Brut nature", "Extra brut" and "Brut") and by adjusting residual sugar content requirements.

10. "Port" requirements

The amendments are slight adjustments to the recently published requirements for what was previously known as RSA "port" classes.

11. Estate wine

The Scheme requires that a unit for the production of estate wine must consist of adjoining land only. However, in recognition of prior existing rights, the existing non-adjoining land of the units registered for the production of estate wine under the names Bergsig, De Wetshof, Goedverwacht, Mont Blois, Neethlingshof, Rietvallei and Vera Cruz are deemed to be adjoining. No expansion of these units from such non-adjoining land is allowed. The Scheme also requires that an estate wine must undergo all processes on the unit concerned. The amendment clarifies "all processes" by stating that it means "all processes up to and including bottling". Thus, labelling need not be done on the unit.

12. The indication of medals or awards

The Government Notice now limits the indication of medals or awards in connection with the sale of liquor products as follows: "Other than as authorised in terms of the Act or a scheme, no person shall in connection with the sale of a liquor product use a medal, sticker, symbol, disc or other device in a manner that conveys or creates or is likely to convey or create the impression that the liquor product concerned has received a medal or award, unless certain criteria are met as stipulated in the Act."⁵¹

2.1.20. Measurement Units and Measurement Standards Act (2006)

The purpose of this act is to provide for the development, promotion and maintenance of standardisation and quality in connection with commodities and the rendering of related conformity assessment services; and for that purpose to provide for the continued existence of the SABS, as the peak national institution; to provide for the establishment of the Board of the SABS; to provide for the repeal of the Standards Act, 1993; to provide for transitional provisions; and to provide for matters connected therewith.

Furthermore, the Act aims to:⁵²

- provide for the continuation of the SABS as the peak national standardisation institution in South Africa responsible for the development, maintenance and promotion of South African National Standards;
- ensure provision of an internationally recognised standardisation system that continue to support the needs of South African enterprises competing in a fast-paced global economy;
- promote South African National Standards as a means to facilitate international trade and enhancing South Africa's economic performance and transformation.⁵³

⁵¹Amendments to Liquor Products Legislation In "Wine Law" June 2009. A. Matthee

⁵²Measurement Units and Measurement Standards Act, No. 18 of 2006. 2008. Government Gazette 31253

⁵³ Ibid.

The National Metrology Institute of South Africa (NMISA) underpins all accurate measurement in South Africa and contributes to South Africa's global competitiveness through the maintenance of primary scientific standards of physical quantities, certification of reference materials and the performance of referee analysis in cases of measurement dispute.

The NMISA provides internationally recognised measurement standards and measurement services, which provide for the local use of measurement and derived units of the International System of Units (SI).

Previously the CSIR National Metrology Laboratory (NML), the NMISA was established on 1 May 2007 and is mandated by the Measurement Units and Measurement Standards Act No. 18 of 2006 to realise, develop, maintain and disseminate the national measurement standards and units. In so doing, the NMISA ensures that the South African measurement standards and units are comparable with those of other nations that participate in the Metre Convention, and provides a scientifically valid starting point for the measurement system within South Africa.

The core functions of NMISA are to:

- Maintain fit for purpose national measurement standards for SA and the region
- Ensure the application of the SI in SA and the region
- Provide referee analysis in cases of measurement dispute
- Assist law enforcement through the provision of traceable measurement and calibration to law enforcement agencies
- Produce certified reference materials for industry, health services and police forensics
- Assist the region and Africa to obtain traceability for measurement results in areas crucial for health and trade
- Support national initiatives such as the National Industrial Policy Framework through the provision of traceability
- Provide leadership in measurement technology in SA and the region
- Investing in human capital in measurement sciences in ways that systematically and increasingly reflect the diversity of South Africa's society.⁵⁴

2.1.21. Private Security Industry Regulation Act (2001)

The Private Security Industry Regulation Act 56 of 2001, as updated on 31 August 2007, and amended by the Prevention and Combating of Corrupt Activities Act 12 of 2004, provides for the

⁵⁴National Metrology Institute of South Africa. Media Talk in partnership with the dti. 2008. Excerpt from "Business Corner"

regulation of the private security industry, to establish a regulatory authority for that purpose and to provide for matters connected therewith.

It also stipulates regulations for the following:

- Code of conduct for security service providers
- Improper conduct enquiries regulations
- Persons prohibited from performing certain acts unless registered as security officers
- Private security industry regulations
- Security officers, regulations relating to
- Training of security officers regulations ⁵⁵

2.1.22. Second-Hand Goods Act (2009)

From the 1st April 2012, the Second-Hand Goods Act, 2009 (Act No 6 of 2009) came into effect. The Act will replace the out-dated Second-Hand Goods Act of 1955 (Act No 23 of 1955) and covers a wide range of activities from pawn shop activities to large metal recyclers. It aims to implement compliance monitoring by industry associations as well as focusing on cable theft and its deleterious effect on infrastructure. ⁵⁶

The central purpose of the Act is to regulate the business of dealers in second-hand goods and pawnbrokers, in order to combat trade in stolen goods, to promote ethical standards in the second hand goods trade and to provide for matters connected therewith. ⁵⁷

The Act also includes stipulations that include, inter alia:

- Obligatory registration for second hand goods companies and the process thereof
- Accreditation of second hand goods dealers
- Record keeping by dealers
- Legislation with regards to false information provided by dealers on second hand goods
- Chapters 5, 6 and 7 of the Act deal with the motor vehicles, controlled metals and communications equipment industries respectively.
- Chapter 8 of the Act details the powers of a police official as it pertains to identification, routine inspections, entry, search, seizure and seal off of premises. ⁵⁸

⁵⁵ Private Security Industry Regulation Act 56 of 2001.

⁵⁶ Minister Mthethwa: Parliament, Cape Town – 07 March 2012.

⁵⁷ Second-Hand Goods Act No 6 of 2009. 2009. Government Gazette 32087

⁵⁸ Ibid.

A ground-breaking provision in the act is that the possession of a stolen item will be considered as an equal offence to having stolen the item in the first place, however, it is worth noting that the most contentious requirement is that a person acquiring goods from a dealer will have to provide their address, full name and a copy of their ID. Dealers are now required to request their clients for copies of their passports and residential details before they can buy any second hand merchandise. Unfortunately, the threat of identity fraud may make this a problematic issue for some customers. The result could be less sales or sales which may technically be illegal.

However, industry leaders believe the new Act makes considerable provisions for self-regulation of the industry. The previous act (Second-Hand Goods Act of 1955) saw all regulatory powers residing with the SAPS, but under the new act, dealers' associations can be registered and petition the authorities to be exempt from certain constraints of the Act. The biggest stakeholders in the trade of second-hand goods in SA have formed a new association especially for this reason.⁵⁹

2.1.23. Standards Act (2008)

The new Standards Act (No. 8 of 2008) was promulgated on 1 September 2008 and the former Regulatory division was separated from the SABS to form the new National Regulator for Compulsory Specifications (NRCS) under the Department of Trade and Industry (the dti).⁶⁰

The Act, together with the National Regulator for Compulsory Specifications (NRCS) Act, No. 5 of 2008, repeals the old Standards Act, No. 29 of 1993. The purpose of the Act is to provide for the development, promotion and maintenance of standardisation and quality in connection with commodities and the rendering of related conformity assessment services; and for that purpose to provide for the continued existence of the SABS, as the peak national institution; to provide for the establishment of the Board of the SABS; to provide for the repeal of the Standards Act, 1993; to provide for transitional provisions; and to provide for matters connected therewith.⁶¹

Furthermore, the Act aims to:

- provide for the continuation of the SABS as the peak national standardisation institution in South Africa responsible for the development, maintenance and promotion of South African National Standards;
- ensure provision of an internationally recognised standardisation system that continue to support the needs of South African enterprises competing in a fast-paced global economy;

⁵⁹Cape Argus. 01 May, 2012. Report on new used goods law by Daneel Knoetze

⁶⁰SABS Annual Report 2008/2009

⁶¹Standards Act No 8 of 2008. Government Gazette 31253

- promote South African National Standards as a means to facilitate international trade and enhancing South Africa's economic performance and transformation. ⁶²

The effect of these legislative changes was to transform the previous regulatory division of the SABS into a separate and independent regulatory body, the NRCS, while refining the mandate of the SABS. The SABS strives to be the trusted third party that offers uncompromised value-added standardisation services aimed at promoting the protection of the integrity of the South African market, the protection of consumers, the creation of a competitive advantage for the South African industry and access by South Africans to local and international markets.

Over the medium-term period, the SABS will focus on developing market-relevant national standards that are harmonised with international standards. It will continue to offer testing services and conformity assessments to local and international customers. This includes opening a regional office in China. Central to this approach will be the creation and maintenance of awareness of the SABS brand, maintaining accreditation with local and international bodies and adherence to the principles of good corporate governance.

With a view to maximising its service delivery to the industries it serves, the SABS has aligned its activities with seven different industry sectors, each housing the whole range of SABS services pertinent to a particular industry. This change ensures easy access to products, faster reaction and turnaround times, and the creation of centres of knowledge excellence that are easily available to clients. ⁶³

The seven industry sectors are:

- Chemicals;
- Electro-technical;
- Food and health;
- Mechanical and materials;
- Mining and minerals;
- Services; and
- Transportation

The dti issued standards matters relating to the Act in the Government Gazette of 31 December 2009 (Notice 1246, Gazette 32837). It explains the actions of council of the SABS in terms of the

⁶²Ibid.

⁶³South African Bureau of Standards. dti.

Standards Act. Some of these actions include the adjustment of all South African standards that were previously published by the South African Bureau of Standards with the prefix "SABS", which have been re-designated as South African national standards and are now published by Standards South Africa (a division of SABS) with the prefix "SANS".

A list of all existing South African national standards was published by Government Notice No. 1373 of 8 November 2002.⁶⁴

The notice includes:

- the issuing of new standards (Schedule 1)
- the amendment of existing standards (Schedule 2)
- the cancellation of standards (Schedule 3)

2.1.24. National Regulator for Compulsory Specifications (NRCS) Act (2008)

The Act's main purpose is to provide for the establishment of the National Regulator for Compulsory Specifications of South Africa, to provide for the appointment of the Board of the National Regulator, to provide for the administration and maintenance of compulsory specifications in the interests of public safety and health or for environmental protection and to provide for matters connected therewith.

Furthermore, the Act intends to:

- Promote the rights and obligations of government to protect the health and safety of the public and the environment;
- Establish the national regulator for compulsory specifications of South Africa to be responsible for the administration and maintenance of compulsory specifications and the implementation of a regulatory and compliance system for compulsory specifications; and
- Provide for market surveillance by the national regulator in order to ensure compliance with the compulsory specifications and to provide for sanctions for non-compliance to compulsory specifications.⁶⁵

As per the Act's mandate, the National Regulator for Compulsory Specifications (NRCS) came into being with the express purpose of the administration of three Acts that reside under its jurisdiction. These include the *National Regulator for Compulsory Specifications (NRCS) Act, No. 5 of 2008*, *Trade Metrology*, and *National Building Regulations Acts*.

⁶⁴Government Gazette 32837, Notice 1246. 31 December 2009.

⁶⁵*National Regulator for Compulsory Specifications (NRCS) Act, No. 5 of 2008*. 2008. Government Gazette 31216

Furthermore, the organisation administers regulations that fall under the jurisdiction of other government departments, as per agreement with the respective departments. The NRCS structure is primarily based on five industry clusters. Four industry groupings are relatively homogeneous, and one is a collective of a diverse group of industries.

This results in a structure that contains the following functional departments:

- Electro-technical - responsible for regulating compulsory specifications dealing with electrical goods;
- Automotive - responsible for vehicles and vehicle components;
- Food and Associated Industries - responsible for fishery products and canned meat; and
- Chemical, Mechanical and Materials - with a diverse range of products including cement, paraffin stoves, respirators and other personal protective equipment;
- Legal Metrology - responsible for regulations that fall under the Legal Metrology Act.

The organisation's mandate is to protect human health, safety and the environment, as well as ensure fair trade. It is the objective of this organisation to become an effective and efficient regulatory entity in South Africa that will reach its organisational goals and not only be recognised nationally, but also in the regional and global context. ⁶⁶

- Make recommendations to the Minister with regard to compulsory specifications;
- Administer and maintain compulsory specifications;
- Undertake market surveillance through inspection in order to monitor compliance with compulsory specifications; and
- Enforce compliance with compulsory specifications.

In order to achieve these objectives, the NRCS may:

- Acquire and maintain the equipment required for market surveillance inspection purposes;
- Inform South African commerce, industry and the public about compulsory specifications;
- Establish and maintain the necessary expertise on an internationally acceptable level;
- Obtain membership of, participate in or develop relationships with foreign or international bodies that have similar objectives to those of NRCS;
- Perform, insofar as it is not contrary to or inconsistent with any Act, such functions as the Minister may assign to NRCS;
- Issue a letter of authority certificate which permits commodities or products to be sold or services to be supplied;

⁶⁶ *National Regulator for Compulsory Specifications (NRCS)*: dti website.

- Obtain the cooperation of government departments, local authorities or other public bodies, and enter into agreements with them;
- Enter into agreements with conformity assessment services providers to inspect, examine, test or analyse samples on behalf of NRCS; and
- Establish specialist consultative committees to provide input into the process to interpret and implement compulsory specifications.⁶⁷

The main purpose of the NRCS is to protect the public by enforcement of regulations governing the safety of products, fairness of trade and protection of the environment. It maintains surveillance over manufacturers and importers to prevent these goods from entering the market.

2.1.25. Trade Practices Amendment Act (2001)

The aim of the Act is to amend the Trade Practices Act, 1976, so as to provide for the prohibition of certain practices relating to sponsored events and to increase the penalties for the contravention of, or failure to comply with, the provisions of the said Act; and to provide for matters connected therewith.⁶⁸

The old Trade Practices Act of 1976 used to provide for the control of certain advertisements, to restrict the giving or supply of benefits and to regulate the use of trade coupons in connection with the sale or leasing of goods or the rendering or provision of certain services, to prohibit or control certain trade practices, to repeal the Trade Coupons Act, 1935 and to provide for incidental matters. This Act was repealed in terms of Section 121 of the Consumer Protection Act, 2008.

2.1.26. The Consumer Affairs (Unfair Business Practices) Act (1988)

This Act was instituted to provide for the prohibition and control of certain business practices, as well as the establishment of the consumer affairs committee and was amended by, inter alia, the National Credit Act 34 of 2005, the Consumer Affairs (Unfair Business Practices) Act 21 of 2001.

The Act is an enabling Act and not prescriptive. It prohibits nothing, although its message to businesses is clear - do not to get involved with unfair business practices.

Regulations under the Act include:

- Advanced Fee Payment Schemes: when the victim pays money to someone in anticipation of receiving something of greater value, such as a loan, contract, investment, or gif, but then receives little or nothing in return.
- Appeal Procedures

⁶⁷NRCS Objectives. NRCS website

⁶⁸Trade Practices Amendment Act, No. 26 of 2001. Government Gazette 22792

- Mail Order Entities offering prizes: entities that do not necessarily offer goods but require of consumers to forward any type of fees in order to receive a prize.
- Inertia selling the practice of providing goods or services to people who have not requested them.
- Control over preserved timber
- Offering and selling speculative software to consumers: this practice pertains to consumers who buy software packages from various sellers who claim that the software will help buyers understand how to trade in securities and exchanges and that the software will assist consumers to play the stock market. The software, it is claimed, will enable the buyer to trade profitably. ⁶⁹

2.1.26.1. **CAFCOM**

The Act is administered by CAFCOM, or the Consumer Affairs Committee, a statutory body under the auspices of the dti.

CAFCOM's functions are to:

- make known information on current policy in relation to certain business practices in general and unfair business practices in particular, to serve as general guidelines for persons affected thereby.
- receive and dispose of representations in relation to any matter with which it may deal in terms of the Act.
- make such preliminary investigation as it may consider necessary into, or confer with any interested party in connection with any unfair business practice which allegedly exists or may come into existence.
- on the directions of the Minister, or on its own initiative make such investigation as it may consider necessary into any unfair business practice which CAFCOM or the Minister has reason to believe exists or may come into existence.
- CAFCOM can recommend to the Minister to prescribe by notice in the gazette such action to stay or prevent any unfair business practice which the committee has reason to believe exists or may come into existence. ⁷⁰

2.1.26.2. **Definition of unfair business practice**

The definition of an unfair business practice is extremely wide. It is any business practice which, directly or indirectly, has or is likely to have the effect of:

- harming the relations between businesses and consumers,
- unreasonably prejudicing any consumer,

⁶⁹The Consumer Affairs (Unfair Business Practices) Act 71 of 1988

⁷⁰Dti Consumer and Corporate Regulations Division: Presentation by Amanda Lotharingen

- deceiving any consumer, or
- unfairly affecting any consumer.⁷¹

2.1.27. National Small Enterprises Act

2.1.27.1. National Small Business Amendment Act 26 of 2003

The Act was promulgated in order to amend the National Small Business Act, 1996, so as to repeal all provisions pertaining to the National Small Business Council. It also empowers the Minister to facilitate and establish an Advisory Body to represent the interests of small business and aims to make the Public Finance Management Act, 1999, applicable to the Agency. Furthermore, the Act makes further provision in respect of the functions of the Agency; to do away with the requirement of calling for nominations for directors of the Board by notice in the Gazette, to repeal the provisions pertaining to alternate directors and to substitute the Schedule to that Act, in order to reflect the current economic position; also to provide for matters connected therewith.⁷²

2.1.27.2. National Small Business Amendment Act, No 29 of 2004

This Act amended the National Small Enterprises Act, 1996 to provide for the establishment of the Small Enterprise Development Agency and to repeal all provisions relating to the Ntsika Enterprise Promotion Agency. It also amended the name of the principal Act from National Small Business Act to the National Small Enterprises Act.⁷³

2.1.27.3. Small Enterprise Development Agency (SEDA)

Seda was established in December 2004 as an agency under the Department of Trade and Industry. The establishment was done by merging three organisations; Ntsika Enterprise Promotion Agency, National Manufacturing Advisory Centre (NAMAC) and the Community Public Private Partnership Programme (CPPP). The GODISA Trust and the Technology Programmes were integrated into Seda in April 2006, becoming Seda Technology Programme (Stp).

Seda provides business development and support services for small enterprises through its national network, in partnership with other role players in small enterprise support. Seda also implements programmes targeted to business development in areas prioritised by the Government. The vision of Seda is to be the centre of excellence for small enterprise development in South Africa and its mission is stated as one to develop, support and promote small enterprises to ensure their growth and sustainability in coordination and partnership with other role players.⁷⁴

⁷¹Ibid.

⁷²National Small Business Amendment Act 26 of 2003. Government Gazette 25763

⁷³National Small Business Amendment Act, No 29 of 2004. Government Gazette 27101

⁷⁴Seda vision and mission statement. Seda website

The business model of Seda is based on a number of delivery points located throughout the country, supported by a national office located in Pretoria/ Tshwane. Whilst the national office is responsible for overall co-ordination and provision of support services and systems to the provincial network, the various delivery points are the interface point with the target market, and responsible for the provision of the products and services that Seda offers its clients. These delivery points currently take the form of Seda branches and Enterprise Information Centres (EICs), as well as Seda Technology supported business incubators.

To increase the number of delivery points through which Seda will access its clients, the institution will increase the rate of co-ordination and number of partnership agreements and associations with other Small, Medium and Micro Enterprise (SME) support agencies/institutions.

To date, the organisation has established a network of 42 branches, 8 provincial offices, 53 EICs and a national office in Pretoria. Through this network, various programmes were delivered to over 185,000 clients during the 2007/08 financial year.⁷⁵

2.1.28. Business Names Act, 1960 (repealed by Consumer Protection Act 68 of 2008)

This Act has been repealed by the National Consumer Protection Act 68 of 2008, section 121. The National Consumer Protection Act now provides for the regulatory framework with regards to business names and their registration.

The new Act has various limitations to what is allowed in naming a business. Some of the main guidelines include:

- Companies must have a name and be allocated a registration number by the Registrar of Companies.
- This name and its registration number must be displayed clearly in easily legible characters outside the registered office and every place in which the business is conducted.
- The registration number and the name must be used in official publications, letters, invoices, receipts, delivery notes, and 'all bills of exchange, promissory notes, endorsements, cheques and orders for money or goods'.
- If the name of the company is not used correctly on 'all bills of exchange, promissory notes, endorsements, cheques and orders for money or goods', the person who signs the document commits an offence and will be fined.

⁷⁵Seda overview. dti. dti website

- The person may be held liable for the stated amount unless it is paid by the company. This means that the signatory would have to pay out of pocket should the company fail to pay for any reason.
- It is possible for a company or a CC to register a literal translation of its name into another official language and then use the name as well.
- A sole proprietor, partnership and business trust is only required to state its 'name, title or description' on all trade catalogues and circulars, business letters, orders for goods and statements of account.

There are a number of statutes that prohibit the use of certain words in business names. For example:

- A person may not use a name implying that he/she is e.g. an attorney, notary or conveyancer unless they are one.
- A business name may not include the words 'government', 'state' or 'United Nations'.
- The use of the word 'bank' is prohibited unless the person using the term is registered as a deposit-taking institution or unless the business is incorporated under the Banks Act or some other law relating to a particular type of company.
- The word 'Limited' (Ltd.) or 'Incorporated' (Inc.) may not be used as the last word of its name.

Certain compulsory words must appear in, or at the end of, the names of companies and CC.

- The name of a public company must end with 'Limited' or 'Beperk'.
- The name of a private company must conclude with '(Proprietary) Limited' or '(Eiendoms) Beperk'.
- The name of a company or CC being wound up must have the words 'In Liquidation', 'In Likwidasie', 'In Voluntary Liquidation' or 'In Vrywillige Likwidasie' appended to it.
- The words 'Under Judicial Management' or 'Onder Geregtelike Bestuur' must appear immediately after the name of a company under judicial management.
- The name of a close corporation must end with the abbreviation 'cc' or 'bk' (the abbreviation for 'beslote korporasie').

Subsequent to the abovementioned regulations, the following also apply:

- The name used by a sole proprietorship, partnership or business trust must not imply that the business enjoys government patronage.

- It may not be one prohibited by the Registrar of Companies on the basis that it can deceive or mislead the public, that it causes annoyance or offence to any person or class of persons, or that it is suggestive of blasphemy or indecency.

In the case of companies and CCs, a name must not, in the opinion of the relevant registrar, be 'undesirable'. Some examples of what is considered undesirable are:

- Names identical to, or nearly resembling names already registered.
- Names containing descriptive words conveying an impression of a company's business that differs materially from the company's main business.
- A name consisting of fewer than three letters of the alphabet.

To ensure a company's name doesn't already exist or infringe on regulations, business owners can contact the Companies and Intellectual Property Commission (CIPC) to conduct searches on the Trade Marks Register, Companies and Close Corporations Registers and .CO.ZA Domain Name Register. Once a go-ahead is given to use the name, one may instruct the CIPC to register the business name, domain names, slogans, logos and product names as trade marks to obtain proper protection.⁷⁶

2.1.29. Businesses Act (1991)

The Business Act 71 of 1991, as amended in the Government Gazette 15374, to be known as the Businesses Amendment Act 186 of 1993, has the responsibility of regulating the licensing of certain business entities. It also aims to empower local authorities to implement by-laws regarding the conducting of business by such entities as street vendors, pedlars or hawkers.⁷⁷

2.1.29.1. Businesses requiring a license to operate

The following business entities require a business license to operate.

1. Food provision

- Any business who operates by selling or supplying meals, take-aways or perishable foodstuff, whether on or off the business premises.

2. Health and entertainment facilities

Any business that operates within the following parameters is required to obtain a license from the necessary authority:

- Turkish baths, saunas and health baths;
- massage or infra-red treatments;
- male and female escorts;

⁷⁶ *Choosing the Right Name for your business*. 2012. SME Toolkit SA. Reprinted by kind permission of Business Partners Ltd. International Finance Organisation

⁷⁷ Businesses Amendment Act 71 no. 186 of 1993. 1993. Government Gazette 15374

- three or more slot machines, electronic games or any other instrument designed to play games or utilised for recreational purposes which involves any form of payment for operation;
- three or more snooker or billiard tables;
- nightclubs and discotheques;
- cinemas and theatres; and
- adult premises (as referred to in Section 24 of the Films and Publications Act of 1996)

3. Hawkers

Any business operating within the following parameters as a hawker, requires a license:

- Any person operating as a hawker selling food and meals, which are taken from place to place or sold from a vehicle, requires a license to operate.
- Any person selling food or food stuffs on a public road or any other place accessible to the public;
- Any person selling food or food stuffs in or from a stationary vehicle or movable structure.

2.1.29.2. *Businesses exempt from applying for a license.*

Certain businesses are not required by the Act to apply for a license to operate. These include:

- A business carried on by the State or local authority;
- A business carried on by a charitable, religious, agricultural, cultural or educational organisation if all profits generated are devoted entirely to the purpose of said organisation.
- A business selling or preparing food stuffs in a private residence.
- Persons exempted from the provision as deemed appropriate by the Minister.
- Social, sports or recreational clubs where food or food stuffs are sold for sole consumption by the members of such a club and/or their guests for consumption on the premises.⁷⁸

2.1.30. **Non-profit Organisations (1997)**

The NPO Directorate within the Department of Social Development registers organisations under the Non-Profit Organisations Act (No. 71 of 1997). The primary purpose of this Act is to encourage and support organisations in a wide range of work they do by:

- Creating an enabling environment for NPOs to flourish.
- Setting and maintaining adequate standards of governance, accountability and transparency.

The Act provides a voluntary registration facility for NPOs. A non-profit organisation is defined as: a trust, company or other association of persons: (a) established for a public purpose, and (b) the income and property of which are not distributable to its members or office bearers except as reasonable compensation for services rendered.

⁷⁸ Businesses Amendment Act 71 no. 186 of 1993. 1993. Government Gazette 15374

Any organisation that is not for profit and is not part of government can apply for registration; that is:

- Non-governmental organisations (NGO).
- Community-based organisations (CBO).
- Faith-based organisations (FBO).
- Organisations that have registered as Section 21 companies under the Company Act (No. 61 of 1973).
- Trusts that have registered with Master of the Supreme Court under the Trust Property Control Act 57 of 1988.
- Any other voluntary association that is not for profit.

The directorate can only register an organisation that has a constitution or any other founding document. Registering a non-profit organisation is free of charge. ⁷⁹

In terms of the State's responsibility to non-profit organisations, within the limits prescribed by law, every organ of state must determine and co-ordinate the implementation of its policies and measures in a manner designed to promote, support and enhance the capacity of non-profit organisations to perform their functions. The Minister may prescribe benefits or allowances applicable to registered non-profit organisations, after consultation with the committees of the two Houses of Parliament responsible for welfare.

Certain offences are stipulated in the Act. These are, inter alia, the following:

- It is an offence to cause a non-profit organisation, when it is being wound up or dissolved, to transfer its remaining assets otherwise than in the manner contemplated in section 12(2)(0).
- It is an offence for persons, bodies or organisations:
 - i) to represent themselves as being validly registered in terms of this Act unless they are so registered;
 - ii) to make use of a registration number, a registration certificate or any information contained in the registration certificate if they havenot been registered in terms of this Act; or
 - iii) to make material false representations in any document or a narrative, financial or other report submitted to the director. ⁸⁰

⁷⁹Non-Profit Organisations Act No. 71 of 1997. 1997. Government Gazette 18487

⁸⁰Non-Profit Organisations Act No. 71 of 1997. 1997. Government Gazette 18487

2.1.31. The National Development Agency Act (1998)

The National Development Agency Act (No. 108 of 1998) was created in order to establish a National Development Agency aimed at promoting an appropriate and sustainable partnership between the Government and civil society organisations to eradicate poverty and its causes; to determine the objects and functions of the Agency; to determine the manner in which it is to be managed and governed; to regulate its staff matters and financial affairs; and to provide for connected matters. The primary object of the NDA is to contribute towards the eradication of poverty and its causes by granting funds to civil society organisations for the purposes of carrying out projects or programmes aimed at meeting development needs of poor communities; and strengthening the institutional capacity of other civil society organisations involved in direct service provision to poor communities.

The secondary objects of the NDA are to promote consultation, dialogue and sharing of development experience between civil society organisations and relevant organs of state; and debate on development policy, as well as to undertake research and publication aimed at providing the basis for development policy.⁸¹

2.1.32. Regulations for the Winding-up and Judicial Management of Companies

Despite the fact that the Companies Act of 1973 has been repealed by the new Companies Act of 2008, the Regulations for the Winding-up and Judicial Management of Companies (of 1973) are still in effect. Some of the salient aspects of the Act which are incorporated into the new Companies Act include a regulatory framework for the liquidation (winding up) and judicial management of companies.

2.1.32.1. Winding up or Liquidation of companies

Liquidation refers to the practice of placing a company which is in financial difficulty under judicial protection. At the time of liquidation, the rights of creditors are frozen, in order to prevent certain creditors from receiving preferential treatment at the expense of others. Furthermore, a liquidator is appointed to distribute the assets to the creditors.

A company may be wound up by the court if the following applies:

- The company is unable to pay its debts;
- the company has by special resolution resolved that it be wound up by the Court;
- the company commenced business before the Registrar certified that it was entitled to commence business;
- the company has not commenced its business within a year from its incorporation, or has suspended its business for a whole year;
- in the case of a public company, the number of members has been reduced below seven;
- seventy-five per cent of the issued share capital of the company has been lost or has become useless for the business of the company;

⁸¹The National Development Agency Act No. 108 of 1998. Government Gazette 19520

- the company is unable to pay its debts as described in section 345;
- in the case of an external company, that company is dissolved in the country in which it has been incorporated, or has ceased to carry on business or is carrying on business only for the purpose of winding up its affairs;
- it appears to the Court that it is just and equitable that the company should be wound up.⁸²

The five broad categories of just and equitable grounds for the wind up of a company were described by judge J. Coetzee in *Rand Air (Pty) Ltd. versus Ray Bester Investments (Pty) Ltd.*⁸³ These categories were:

1. Disappearance of the company substratum.
2. Illegality of the objects of the company and fraud committed in connection therewith.
3. Deadlock resulting in the management of the company's affairs being so divided that there is no way of resolving the deadlock other than by way of a winding up order.
4. Grounds similar to those for the dissolution of partnership where the company is in substance a partnership in corporate form i.e. the wind -up would be in the same form as the dissolution of a partnership.
5. Where there is oppression, e.g. where persons who control the company have been guilty of oppression towards minority shareholders.

Coetzee indicated that these categories do not constitute any kind of final word on wind ups and it is open to the courts to devise other categories in the future.

The new Companies Act does not alter the winding-up procedures substantially. Previous sections of the 1973 Act applicable to winding-up have been replaced by new sections 79-81 of the 2008 Companies Act. The new Act provides for the development of a unified insolvency law, and therefore allows transitional arrangements that preserve the current status quo for winding-up of “insolvent” until such a law is promulgated. The new Companies Act of 2008 also provides that a court may order the winding up of a solvent company upon request pursuant to a resolution of the company. An application of a “business rescue practitioner” in a business rescue proceeding will also be considered. The company, its directors, or one or more shareholders may also petition the court for winding-up in instances where the directors are deadlocked in management of the company, or alternatively where negotiations with regards to voting rights have stalled between shareholders.⁸⁴

⁸² Companies Act of 1973

⁸³ *When is it Just and Equitable to wind up companies?* Keith Braatvedt. De Rebus. June 2010

⁸⁴ *Insolvency Systems in SA: Strengthening the Regulatory Framework.* 2010 USAID Financial Sector Program Report

2.1.32.2. *Judicial management of Companies*

Where a company is wound up for financial reasons, it is sometimes the case that it could have been saved had it been managed well. Judicial management was introduced to assist this type of company to overcome a temporary setback without going out of business.⁸⁵

Should a company, either through mismanagement or some other mechanism, be unable to pay its creditors, and is thereby deemed to be an unsuccessful venture, the court may order that a company be placed under judicial management to enable it to pay off debts and structure it to become successful again. This can occur once there is reasonable evidence that once the company is placed under judicial management, it can become successful again. For this procedure, a judicial manager is appointed by the court to guide the company out of financial difficulties. Usually this is done by reaching a compromise with its creditors. It also includes proper management of the company. The court will decide when a judicial management order may be lifted, usually once all stipulations within the order are fulfilled.⁸⁶

2.1.33. *Regulations for the Retention and Preservation of Company Records(1983)*

The Act aims to clarify and regulate how and for how long companies should retain records of their business. Some of the salient aspects of the Act are the following:

- A company may reproduce or cause to be reproduced any record to be kept by it under the Act on microfilm or electronically;
- A reproduction of any original record of a Company on microfilm or electronically shall be certified by a director or officer of the Company to be a true and accurate reproduction of the original of such record and such certificate shall be in the prescribed form;
- Any reproduction shall for all purposes be deemed to be the original record of the Company concerned, and a copy obtained by means of such reproduction and which has been certified by a director or officer of that Company as a true copy of such reproduction, shall be admissible in evidence, and shall be effective in law as if it were the original record concerned.

Disposal and retention of documents and records:

- The original of any record of a Company, which has been reproduced on microfilm or electronically and duly certified, by a director or officer of the Company may be destroyed after a period of 3 years from the date that the record was reproduced.

⁸⁵Standard Bank Glossary of terms

⁸⁶Country Q&A South Africa. 2008. L. Katz and E.N. Sonnenbergs. Restructuring and Insolvency 2007/2008.

- It is important to note that a particular document may well rank for retention under more than one statute.
- As a general guideline, the following documents should be destroyed:
 - o All paperwork not needed from a commercial or legal perspective.
 - o Duplicates of reports, minutes and other papers when the master copy is held by the originator and the need for duplicates has passed.
 - o Shredding is considered the best method of disposing of unwanted documents, especially confidential documents. Salvage disposal does not necessarily ensure confidentiality of the documents while burning may pose environmental and safety problems.
- Electronic retention of records is given legal recognition by the Electronic Communications and Transactions Act(No. 25 of 2002) (“the ECT Act”), provided certain requirements are met.
- Legal requirements to retain an “original” and the evidential weight of electronically imaged records are facilitated by the ECT Act. Records can be accessed more easily than storing in the paper format.⁸⁷
- The minimum period of retention of any record to be kept by a Company under the Companies Act shall be the periods as specified in the reference Table below (as per Schedule 2 to the Regulations for the Retention and Preservation of Company Records, 1983).⁸⁸

Table 2.1- Periods for Retention of Records

Type of Record	Years to retain (Original)	Years to retain (Original if Microfilmed or Electronic)
Accounting Records		
Accounting records by an Agricultural Produce Agent	3	Nil
Accounting records of Mutual Banks	15	Nil
Ancillary books of account and supporting schedules	15	3
Annual financial statements	15	3
Annual financial statements working	4	1

⁸⁷Retention of Documents. Metrofile/Deloitte & Touche. 2003

⁸⁸Preservation of Records. MD Accountants and Auditors July 2007

Type of Record	Years to retain (Original)	Years to retain (Original if Microfilmed or Electronic)
papers		
Bank instructions	4	1
Bank statements and vouchers	4	1
Bills of Exchange	6	1
Books of account	15	3
Cash books	15	3
Cheques	4	1
Consolidation schedules	15	3
Costing records	15	3
Collective investment scheme's accounting records	5	Nil
Creditors' invoices and statements	15	3
Creditors' ledgers	15	3
Debtors' ledgers	15	3
Debtors' statements	4	1
Deposit slips	4	1
Dividend and interest payment lists (listed company	15	3
Fixed asset register	15	3
General ledgers	15	3
Goods received notes	4	1
Insolvent businesses	3	Nil
Insolvent estates (books and documents in possession of trustee)	6 months after confirmation by Master of final trustee's account	6 months after confirmation by Master of final trustee's account
Journals		
* Books	15	3

Type of Record	Years to retain (Original)	Years to retain (Original if Microfilmed or Electronic)
* Vouchers	15	3
Payrolls	7	Nil
Petty cash books	15	3
Purchases invoices (with supporting documentation)	4	1
Purchases journals (with supporting documentation)	15	3
Purchase orders	4	1
Rail and shipping documents	4	1
Receipts	4	1
Special resolutions / resolutions passed at general / class meetings		
CM 25	Permanently	3
CM 26	Permanently	3
Tax Records		
Income tax required records	4	1
Taxation returns and assessments *	4	1
Records of subscriptions or levies paid by its members		
VAT Documentation		
Bank statements, deposit slips stock lists, and paid cheques	four years from date of last entry	1
Books of accounts	four years from date of last entry	1
Detailed records of the registered vendors' transactions	4	1
"Invoices, tax invoices, credit and debit notes"	four years from date of transaction	Nil
Systems documentation		

Type of Record	Years to retain (Original)	Years to retain (Original if Microfilmed or Electronic)
* Charts and codes of accounts	4	1
* Accounting system instruction manuals	4	1
* Systems and programme documentation	4	1
* Other	4	1
Contracts and Agreements		
Agreements of historical significance	Permanently	Nil
Records for establishment of a business relationship	5	Nil
Records of transactions concluded	5	Nil
Debts (The Prescription Act should be referred to as the period depends on the type of debts)	Apr-30	Not discussed in act
Indemnities and guarantees (after date of expiry)	5	Nil
Licensing agreements (after date of expiry)	5	Nil
“Rental and hire purchase agreements, suspensive sale agreements (after date of expiry)”	Nil	1
Correspondence		
General	3	Nil
Accounting related	5	Nil
Agreements (after termination)	5	Nil
Electronic Data		
Electronic personal information	As long as needed	Nil
Record of third party to whom personal information was disclosed	1	Nil

Type of Record	Years to retain (Original)	Years to retain (Original if Microfilmed or Electronic)
Employee Records		
Accident books and records	7	Nil
Application for jobs - unsuccessful	1	Nil
Apprentice records of remuneration	3	At discretion of Training Board
Arbitration award records	3	3
* "In the case of all other records that are not required for the submission of the income tax return, for a period of 5 years from the date of the last entry in any book, or, if not in book form, from the date of completion of the transactions, acts or operations to which they relate."		

(Source: Metrofile/ Deloitte & Touche. "Retention of Documents" 2003)

2.2 Review of Key Business and Commerce Institutions that may form part of the Legal Compliance Framework

The new Companies Act of 2008 saw a complete overhaul of the law with regards to companies and their registration. The major institutions which regulate the registration of companies as well as the compliance and regulations to which SMEs must adhere to are discussed in this section. These relate primarily to the formation of companies, the adherence to labour law, stipulations with regards to standards, health and safety, taxation, as well as the regulations relating to industry-specific SMEs.

The aim of such a review is to streamline the information available on SME registration regulatory requirements which not only explains the judiciary framework (as was done in the previous section), but also to reference the most important institutions in the registration process in order to inform the SME business owner of all necessary steps in establishing a business.

2.2.1. Broad review of institutional Compliance

2.2.1.1. The CIPC⁸⁹

The most important regulatory structure that any new business will deal with is the Companies and Intellectual Property Commission, which is a member of the dti.

The Companies and Intellectual Property Commission (CIPC) was established through the consolidation of the Office of Companies and Intellectual Property Enforcement (OCIFE) and the Companies and Intellectual Property Registration Office (CIPRO). The Commission has independent

⁸⁹CIPC website. 2012.

right of existence under the law and (as authorized by the Companies Act, 2008 (Act 71 of 2008)) has jurisdiction throughout South Africa. CIPC is independent, subject only to the Constitution and the law or any policy statement issued by the Minister of Trade and Industry in terms of this Act. The CIPC Commission is impartial and performs its functions without prejudice.

The Commission's Strategy aims to proclaim the Commission as a "credible, independent and transparent regulator, on par with the best in the world."⁹⁰

The core functions of the Commission are the following:

- Registration of Companies, Co-operatives and Intellectual Property Rights (trademarks, patents, designs and copyright) and maintenance thereof;
- Disclosure of Information on its business registers;
- Promotion of education and awareness of Company and Intellectual Property Law;
- Promotion of compliance with relevant legislation;
- Efficient and effective enforcement of relevant legislation;
- Monitoring compliance with and contraventions of financial reporting standards, and making recommendations thereto to Financial Reporting Standards Council (FRSC);
- Licensing of Business rescue practitioners;
- Report, research and advising the Minister on matters of national policy relating to company and intellectual property law.

The eight strategic objectives identified to guide the Commission to deliver on its mandate for the next Medium -Term Expenditure Framework (2011/12 – 2013/14) are as follows:

- Efficient and effective end to end operations (including registration of companies and juristic persons in terms of the Companies Act)
- Maintenance of accurate up-to-date and relevant information concerning Commission databases, the provision of that information to the public and to other organs of state
- Promotion of education and awareness about legislative requirements related to company and intellectual property laws and compliance with the Companies Act and any other applicable legislation
- Efficient, effective and widest possible compliance and enforcement of relevant legislation
- Ensure best practice developments in company and intellectual property law, ensure reporting and publication of information
- Establish and entrench financial management, administrative compliance and sound governance throughout CIPC

⁹⁰Ibid.

- Build the Human Capital capability and capacity to meet the strategic objectives of CIPC
- Establish world class customer service delivery, which meets the needs of the customer and delivers consistently against a customer promise.

The CIPC has various practical guides and notes available to assist businesses in the process of registering their business in terms of company name reservations, de-registrations, accountability, annual returns, business rescue, trademarks, patents and various other issues relating to business establishment.

In addition, the CIPC offers disclosures, i.e. corporate information for Government Departments, lawyers, accountants, foreigners and members of the public, who wish to track enterprises and individuals, for example to begin a business, or sell products or services, or need the information for court purposes. In terms of the Law of Constructive Notice, information is available to all members of the public.

CIPC offers corporate information in the form of:

- copies and certified copies
- electronic data in the form of electronic disclosure certificates
- data sales in the format of CD's and File Transfer Protocol (FTP)

The CIPC also has a mandate to regulate the business registration process as well as various processes associated with it, such as trade mark registration, by ensuring compliance with the regulations of the Companies Act 2008. Should a person not comply with the stipulated regulations, the CIPC may issue a compliance notice.

Such a compliance notice may require the person to whom it is addressed to:

- cease, correct or reverse any action in contravention of this Act;
- take an action required by this Act;
- restore assets or their value to a company or person;
- provide a community service; or
- take any other steps to rectify the effect of the contravention.

The compliance notice must set out the following particulars:

- the person or an association to whom the notice applies;
- the provision of this Act that has been contravened;
- details of the nature and extent of the non-compliance;

- any steps that are required to be taken and the timeframe within which steps must be taken; and any penalty that may be imposed in terms of this Act if required steps are not taken.

A compliance notice remains effective until it is set aside by the Companies Tribunal or a court upon a review of the notice, or until the Commission issues a compliance certificate. If the requirements of a compliance notice have been fulfilled, the Commission must issue a compliance certificate. Should the person to whom a compliance notice has been issued fail to comply with the notice, the Commission may either apply to a court to impose an administrative fine, or direct the matter to the National Prosecuting Authority for prosecution as an offence.⁹¹

2.2.1.2. *The South African Revenue Service (SARS)*

A salient step for any SME registering as a new business entity is to register for the various applicable taxes with SARS, either as an individual or as a company. Firstly, a business must be issued with an income tax reference number. It is mandatory to register within 60 days of starting a business by completing a IT77 form, either at a SARS office or online. The National Small Business Office (NSBO) in SARS is the custodian of all small business tax and customs policy matters within SARS. The office exists to maximise compliance among small businesses while at the same time finding ways to reduce the compliance burden faced by these businesses in South Africa.

a) Registration for VAT

Should a company's turnover be R300,000 a year or more, it is required by law to register as a VAT (Value Added Tax) vendor. This is done by completing and submitting a VAT101 form, which is available at any SARS office. Persons who make taxable supplies in excess of R1 million in any consecutive 12-month period are liable for compulsory VAT registration, but a person may also choose to register voluntarily provided that the minimum threshold of R50 000 has been exceeded in the past 12-month period. Persons who are liable to register, and those who have registered voluntarily, are referred to as vendors. Any person who carries on an enterprise and whose total value of taxable supplies (taxable turnover) exceeds, or is likely to exceed, the compulsory VAT registration threshold, must register for VAT.

Close Corporations must submit the following documentation with their VAT101 forms:

- The VAT127 Form, which must be accompanied by a business plan
- A copy of Form CK1
- Certified copies of the identity documents of the member or members
- A cancelled business cheque

⁹¹CIPC website. 2012

- A copy of a letter issued by the company's accounting officer accepting his or her appointment
- A list of business contacts, if available

b) Registration for Employee Tax

A company that employs one or more staff members who earn over R40,000 per year, has to register for PAYE (Pay As You Earn) tax contributions. In addition, if the company's payroll is more than R500,000 a month, it has to register for payment of the Skills Development Levy (SDL). This requires completion of the EMP101 Form, which includes sections for contributions to the Unemployment Insurance Fund (UIF) and payment of the SDL.

2.2.1.3. The Department of Labour

Some matters relating to labour issues within the workplace involve occupational health and safety, employment equity, keeping of employee records, trade unions, etc. These are briefly discussed below.

(a) Compensation for Occupational Injuries and Diseases

All companies and sole proprietorships that have one or more full-time employees - need to register with the Department of Labour. This is mandatory in terms of the Compensation for Occupational Injuries and Diseases Act (COIDA). The Act replaced the previous Workmen's Compensation Act in 1993, and provides for employees who are injured or killed at work, or who contract a disease directly as a result of their work. It also protects employers from personal liability in these instances. It is the duty of the Compensation Commissioner to meet the cost of medical treatment for employees injured on duty. It also assists employers to continue paying the wages of the injured employee. It is not a tax, but is obligatory for all employers. From April every year, the Compensation Fund sends employers notices of assessments informing them of the amounts due. This is done throughout the year, and it is not possible to predict when employers will receive their notices.

The Occupational Health and Safety Act, 1993, requires the employer to bring about and maintain, as far as reasonably practicable, a work environment that is safe and without risk to the health of the workers. This means that the employer must ensure that the workplace is free of hazardous substances, such as benzene, chlorine and microorganisms, articles, equipment, processes, etc. that may cause injury, damage or disease. Where this is not possible, the employer must inform workers of these dangers, how they may be prevented, and how to work safely, and provide other protective measures for a safe workplace. However, it is not expected of the employer to take sole

responsibility for health and safety. The Act is based on the principle that dangers in the workplace must be addressed by communication and cooperation between the workers and the employer. The workers and the employer must share the responsibility for health and safety in the workplace. Both parties must pro-actively identify dangers and develop control measures to make the workplace safe.

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The Occupational Health and Safety Act is administered by the Chief Directorate of Occupational Health and Safety of the Department of Labour. Provincial officers reside in all nine Provinces. It is required by law that a copy of the Act be displayed for employees to see or available on request (in case of businesses with less than 20 employees). It is important to note that the General Machinery Regulations (GMR) of the OHS Act may require certain employers to display compulsory wall charts as well. Regulation 9(2) of the GMR requires employers with boilers on the premises to display a copy of Schedule C. This summary must be in a legible form in a conspicuous place at the premises. The display of Schedule C would thus be compulsory to employers with boilers on premises. Schedule D of the GMR requires employers with machinery other than a boiler to display a copy of Schedule D. It must be in a legible form displayed in a conspicuous place. Employers who do not comply with the above mentioned prescriptions may receive penalties from the Department of Labour.⁹³

Within four months of the commencement of a business, the Law requires that a business appoint health and safety representatives. These individuals are full-time workers nominated or elected and designated in writing by the employer after mutual consultation with workers have reached an agreement about who these health and safety representatives will be. They must at least be familiar with the circumstances and conditions at that part of the workplace for which they are designated. Agreement must also be reached on the period of office and functions of the health and safety representative and must be settled amongst the employer and the workers. One representative must be designated for every workplace consisting of 20 or more workers. In the case of shops and offices, one representative must be designated for every 100 workers or part thereof. For other workplaces, one representative must be designated for every 50 workers or part thereof.

It is the duty of the employer to ensure the following measures regarding health and safety are adhered to:

⁹²What every worker and employer should know about health and safety in the workplace. Dept. of Labour Media Productions Unit

⁹³South African Labour Guide. T. Boshoff

- identify potential hazards which may be present while work is being done, something is being produced, processed, used, stored or transported, and any equipment is being used
- establish the precautionary measures that are necessary to protect his or her workers against the identified hazards and provide the means to implement these precautionary measures
- provide the necessary information, instructions, training and supervision while keeping the extent of workers' competence in mind. In other words, what they may do and may not do
- not permit anyone to carry on with any task unless the necessary precautionary measures have been taken
- take steps to ensure that every person under his or her control complies with the requirements of the Act
- enforce the necessary control measures in the interest of health and safety
- see to it that the work being done and the equipment used, is under the general supervision of a worker who has been trained to understand the hazards associated with the work
- such a worker must ensure that the precautionary measures are implemented and maintained. ⁹⁴

(b) Employment Equity

The Labour department also regulates employment equity. In order to comply with Section 21 of the Employment Equity Act 55 of 1998, employers are required to submit their Employment Equity Reports. The Employment Equity Act applies to all employers, workers and job applicants and protects workers and job seekers from unfair discrimination, while also providing a framework for implementing affirmative action. The following are excluded from the Act:

- National Defence Force;
- National Intelligence Agency; and
- South African Secret Service.

The provisions for affirmative action apply to –

- employers with 50 or more workers, or whose annual income is more than the amount specified in Schedule 4 of the Act;
- municipalities;

⁹⁴What every worker and employer should know about health and safety in the workplace. Dept. of Labour Media Productions Unit

- organs of State;
- employers ordered to comply by a bargaining council agreement;
- any employers who volunteer to comply.

Small employers must submit their first report within twelve months of being designated, and thereafter on the first working day of October of every year that ends with an even number.⁹⁵

(c) Retention of employee records

Employers must maintain a record of certain information for each worker. These records must be kept for 3 years after termination. The Basic Conditions of Employment Act applies to all employers and workers, regulates leave, working hours, employment contracts, deductions, pay slips and termination. It does not apply to members of:

- National Defence Force,
- National Intelligence Agency, or
- South African Secret Service; or
- unpaid volunteers working for charity.

The provisions for employee records do not apply to workers who work less than 24 hours a month or employers who employ less than 5 workers.

Employers must keep a record of the following information for each worker:

- Worker's name and occupation
- Time worked
- Pay received
- Date of birth (if under 18 years of age)
- Any other prescribed information

All employers must display a copy of a summary of the Basic Conditions of Employment Act, known as Form BCEA1 in the workplace.

(d) Employers' Duties with regards to Trade Unions

⁹⁵Dept. of Labour

Strong trade unions are necessary for effective collective bargaining - an important way of regulating industrial relations and of determining workers' wages and benefits. Trade unions do not have to be registered with the Department of Labour, but registered unions have additional rights.

Registered unions have more rights than unregistered ones, including:

- organisational rights awarded by the Commission for Conciliation, Mediation and Arbitration (CCMA);
- a right to –
 - o be a member of a bargaining or statutory council, subject to the admission requirements of the council;
 - o enter into agency and closed shop agreements;
 - o establish workplace forums;
 - o conclude collective agreements;
 - o enter an employer's premises (employer's permission is required to enter a private home) to recruit or meet members;
 - o hold meetings with employees outside their working hours at the employer's premises; and
 - o conduct elections or ballots among its members on union matters.

All trade unions have a right to –

- perform lawful activities;
- form or affiliate with national and/or international trade union or employers' federations; and fund or be funded by such international federations (as per Sections 8, 12 and 17 of the Labour Relations Act).

As per Sections 4 and 5, of the Labour Relations Act, workers and job seekers have a right to join and be active in trade unions.

Workers and job seekers have a right to -

- form a trade union;
- join a trade union;
- take part in lawful trade union activities; and
- be protected from employers or others who discriminate against them because of their membership or activities.

Workers who are members of a registered trade union may give their employer written permission to deduct trade union subscriptions or levies from their wages and may also cancel this deduction by

giving their employer and the trade union one month's written notice. Employers may not discriminate against workers or job applicants who are trade union members or who take part in trade union activities. They may not reward workers or job applicants who are not trade union members. (As per Section 5 of the Act) ⁹⁶

Trade union representatives have the following functions:

- help and represent workers, at their request, in grievance and disciplinary hearings;
- monitor the employer's compliance with the Labour Relations Act, laws regulating terms and conditions of employment, and any collective agreement;
- report any failure by the employer to comply with the law or an agreement to –
 - o the employer,
 - o the representative trade union, and
 - o any responsible authority or agency; and
 - o perform any other function agreed to between the trade union and the employer.
- Trade union representatives may, within reason, take time off with pay during working hours to perform their duties or receive training.

Employers must give trade union representatives any information that may be relevant to -

- grievance and disciplinary proceedings;
- monitoring of workplace-related provisions of the Act;
- monitoring any law concerning working conditions;
- monitoring any collective agreement;
- reporting alleged breaches of collective agreements and labour laws

Employers may not disclose information that:

- is legally privileged;
- is prohibited by any law or court order;
- may harm a worker or the employer; and
- is personal about a worker, unless the worker consents.

Disputes about disclosing information may be referred to the Commission for Conciliation, Mediation and Arbitration (CCMA) in writing.

2.2.1.4. Regional Services Councils

With the exception of specialised enterprises, such as liquor stores and arms dealers, businesses no longer require a license to trade in South Africa. They are also no longer required to register with

⁹⁶Department of Labour

the Regional Services Council (RSC) in the area in which they operate. Businesses used to be charged a regional Services Council Levy. This levy was scrapped in 2007.⁹⁷

The Regional Services Councils Act, 1985 has not been amended to confer the RSC levying powers on district and metropolitan councils. Therefore, the source of power was not the Regional Services Councils Act, 1985 but the Municipal Structures Act, 1998. It is important to note that Section 93(6) of the Municipal Structures Act was repealed by section 59(1) of the Small Business Tax Amnesty and Amendment of Taxation laws (Act No.9 of 2006) (See 2.1.5.), thereby removing district and metropolitan municipalities' authority to collect RSC levies, thereby making the Regional Services Council Act redundant.⁹⁸

The interim RSC levies replacement grant has been put in place until permanent replacements are introduced, including the phasing-in of the sharing of the general fuel levy for metropolitan municipalities from the 2009 Budget and a permanent grant for district municipalities. The latter will take into account the findings of a policy review being conducted by the Department of Provincial and Local Government. The sharing of the general fuel levy with metros will be set off against RSC levies replacement grant allocations.⁹⁹

2.2.1.5. **Nedlac**¹⁰⁰

The National Economic Development and Labour Council Act (No. 35 of 1994) provides for the establishment of a national economic, development and labour council, namely Nedlac.

The Council is governed by an Executive Council, a Management Committee, and consists of four Chambers namely;

- Public Finance and Monetary Policy Chamber;
- Trade and Industry Chamber;
- Labour Market Chamber; and
- Development Chamber.

The objects, powers and functions of Nedlac as set out in the Act, are to:

- Strive to promote the goals of economic growth, participation in economic decision-making and social equity;
- Seek to reach consensus and conclude agreements on matters pertaining to social and economic policy;

⁹⁷Small Business South Africa - Statutory Requirements to Register A Business. 2011. Business Partners Ltd.

⁹⁸Discussion Paper 120. Statutory Law Revision. South African Law Reform Commission. 2010.

⁹⁹2008 Medium Term Budget Policy Statement. Oct. 2008. National Treasury

¹⁰⁰National Economic Development and Labour Council

- Consider all proposed labour legislation relating to labour market policy before it is introduced in Parliament;
- Consider all significant changes to social and economic policy before it is implemented or introduced in Parliament;
- Encourage and promote the formulation of co-ordinated policy on social and economic matters;
- Consider Socio Economic Disputes in terms of Section 77 of the Labour Relations Act;
- In terms of Section 77 of the Labour Relations Act, Nedlac has a dispute resolution function between trade unions and Government and/or Business on issues of socio-economic policy. Section 77 gives workers the right to take part in protest action to promote or defend their socio-economic interests. The Act gives Nedlac the task of bringing the parties to a Section 77 notice together to attempt to resolve the reasons for the contemplated protest action.

Labour in Nedlac is represented by the Congress of South African Trade Unions (Cosatu), the National Council of Trade Unions (Nactu) and the Federation of Unions in South Africa (Fedusa).

The government delegation includes ministers, deputy ministers, directors-general and senior officials from several ministries and departments, including Labour, Finance, Trade and Industry, and Public Works. Business is represented by Business Unity South Africa (BUSA), which was formed out of a merger between Business South Africa and the Black Business Council. The community constituency comprises representatives of the women, youth, disabled and civic sectors. The decision to incorporate a fourth constituency in Nedlac, and the actual process of constituting this constituency, were both novel developments in the history and experience of cooperative institutions such as Nedlac. The community constituency is represented, along with business, government and labour, in the Development Chamber, and also has representatives on the Management Committee and Executive Council.

Research reports for Nedlac are commissioned by the Fund for Research into Industrial Development, Growth and Equity (FRIDGE). FRIDGE, which is financed by the dti and administered by the IDC on behalf of NEDLAC, finances research studies leading to the generation of information, knowledge and/or initiatives aimed at improving the global competitiveness of South Africa's industries.

2.2.2. Business Specific Institutional Compliance

The previous section focused on the main institutions involved in the mandatory procedures when registering a business. There are certain institutions which relate directly to particular commercial practises which require specific procedures to register in order for businesses to operate. Such

institutions deal with inter alia, quality assurance (SABS), licensing of export products, health permits for the production of food stuffs, sector-specific bargaining councils, etc. These various institutions are discussed in the following section.

2.2.2.1. *South African Bureau of Standards*¹⁰¹

The South African Bureau of Standards (SABS) is a South African statutory body that was established in terms of the Standards Act (No. 24 of 1945) and continues to operate in terms of the latest edition of the Standards Act (Act No. 29 of 2008) as the national institution for the promotion and maintenance of standardisation and quality in connection with commodities and the rendering of services.

As the national standardisation authority, the SABS is responsible for maintaining South Africa's database of more than 6,500 national standards, as well as developing new standards and revising, amending or withdrawing existing standards as required. Internationally, SABS experts represent South Africa's interests in the development of international standards, through their engagement with bodies such as the International Organization for Standardization (ISO) and the International Electrotechnical Commission (IEC). South Africa has a long and proud history of involvement with these bodies and was a founder member of ISO. On a regional level, the SABS currently holds the Secretariat for SADCSTAN, the standardisation body for the Southern African Development Community of 14 nations.¹⁰²

In a move to improve its service offerings and responsiveness to customer needs, the SABS also restructured its commercial services into seven industry clusters:

- a) **Chemicals:** The Chemical Cluster provides accredited conformity assessments services to the petro-chemical industries, industrial chemicals, rubber and plastics industries, paint, sealants and coating industries.

The services consist of:

- System Certification
 - o ISO 9001 – Quality Management Systems Certification
 - o ISO 14001 – Environmental Management Systems Certification
 - o OHSAS 18001 – Occupational Health & Safety Management System Certification
- Product Certification
 - o SABS Mark – Approved Performance to National/International Standards

¹⁰¹ About SABS. South African Bureau of Standards

¹⁰² SABS website

b) **Electro-technical:** The Electro-Technical Cluster provides accredited conformity assessment services to the electro-technical and explosion prevention industries.

- System Certification
 - o ISO 9001 – Quality Management Systems Certification
 - o ISO 14001 – Environmental Management Systems Certification
 - o OHSAS 18001 – Occupational Health & Safety Management System Certification
- Product Certification
 - o SABS Mark – Approved Performance to National/International Standards
 - o Safety Mark – Approved Safety Performance to National/International Standards
 - o Certification of Communication Products for ICASA Approval
 - o Certification of Products in accordance with the IECCB Scheme

c) **Food & Health:** The Food & Health Cluster provides accredited conformity assessment services to the food industries, agrochemical industries, pharmaceutical and medical devices industries / sectors.

- System Certification
 - o ISO 9001 – Quality Management Systems Certification
 - o ISO 13485 – Medical devices – Quality Management Systems – Requirements for regulatory purposes
 - o ISO 14001 – Environmental Management Systems Certification
 - o OHSAS 18001 – Occupational Health & Safety Management System Certification
 - o ISO 22000 – Food Safety Management Systems Certification
 - o HACCP (SANS 10330) – Hazard Analysis and Critical Control Point Systems
 - o BRC Global Standard – British Retail Consortium Systems Certification
- Product Certification
 - o SABS Mark – Approved Performance to National/International Standards
 - o SABS PAS 220 – Prerequisite programmes on food safety for Food Manufacturing
- The Formulation laboratory and Agricultural trial facilities at SABS provide services to the Agrochemical sector for the verification of pesticide chemical formulations and for registration of new formulations with the Registrar under Act 36 of 1947. The laboratory also provides quality control testing of vector pesticides and vector pesticide treated fabrics, such as mosquito nets, destined for distribution in Africa.

d) **Mechanical & Materials:** The Mechanical & Materials Cluster provides accredited conformity assessment services to the mechanical and metallurgy industries, building and construction

industries, civil engineering industries, timber and forestry industries, paper and packaging industries, clothing and textile industries.

- **System Certification**
 - o ISO 9001 – Quality Management Systems Certification
 - o ISO 14001 – Environmental Management Systems Certification
 - o OHSAS 18001 – Occupational Health & Safety Management System Certification
 - o FSC / COC Certification
 - o SABS works under the direction of the Woodmark team to deliver relevant certification in SA, Swaziland and Namibia.
 - o SABS provides support within the region for the development of Woodmark certification schemes.
 - o SABS works in association with SA Woodmark an FSC/PEFC accredited Certification Body.
 - o SABS delivers FSC services as in association with the Soil Association Woodmark Programme which is accredited by FSC.
 - **Product Certification**
 - o SABS Mark – Approved Performance to National/International Standards
 - o JASWIC – Joint Acceptance Scheme for Water Installation Components
 - o Consignment Inspection
 - o Inspection and testing of consignments (e.g. leather, textile, footwear)
- e) **Mining & Minerals:** The Mining and Minerals Cluster provides high quality, cost effective, accurate and expert services at its various accredited laboratories.
- f) **Transportation:** The Transportation Cluster provides accredited conformity assessments services to the transportation industries, automotive industries, fitment centres and bus operators.

System Certification

- ISO 9001 – Quality Management Systems Certification
- ISO 14001 – Environmental Management Systems Certification
- OHSAS 18001 – Occupational Health & Safety Management System Certification
- SANS 10399 – Quality Management Systems for Bus Operators
- SANS 10240 – Certification Scheme for Auto-Glass Fitment Centres.
- The SABS administers the following compulsory specifications testing on behalf of the Department of Trade and Industry, and other Government Departments:

- o Safety characteristic and component specifications compliance of new vehicle models, built up vehicles and modifications of vehicles, whether locally manufactured or imported.
- o Replacement brake lining assemblies
- o Hydraulic brake and clutch fluid
- o Replacement safety glass for use in road vehicles
- o Incandescent lamps for motor vehicles
- o Vehicle test stations

g) **Services Cluster:** The Services Cluster provides accredited conformity assessment services to the services industries such as government departments, FET colleges, financial services, medical aid administration, car rental, cleaning services, IT, engineering consulting and warehouses.

- System Certification
- ISO 9001 – Quality Management Systems Certification
- ISO 14001 – Environmental Management Systems Certification
- OHSAS 18001 – Occupational Health & Safety Management System Certification
- ISO 20000 – Information Technology Management System Certification
- ISO 27001 – Information Security Management System Certification
- SANS 16001 – HIV and AIDS management systems – General requirements¹⁰³

2.2.2.2. *The National Regulator for Compulsory Specifications (NRCS)*¹⁰⁴

The new NRCS Regulations were promulgated by the Minister of Trade and Industry, Dr Rob Davies and came into effect on 1 January 2011. The purpose of the Regulations is to ensure the effective implementation of the NRCS Act. According to the Regulations, all entities manufacturing and importing goods or providing services regulated by the NRCS are requested to register and be issued with the registration certificate. The Act transferred the Regulatory Division of the South African Bureau of Standards (SABS) and all regulatory functions of the SABS to a new statutory Department of Trade and Industry institution, namely the National Regulator for Compulsory Specifications (NRCS). The new Act also transferred of all employees in the SABS Regulatory Division to the NRCS, together with relevant regulation including compulsory specifications, agreements, assets and obligations. The Act makes provision for certain compulsory specifications. Compulsory specifications are technical regulations that require conformity of a product or service to health, safety or environmental protection requirements of a standard, or specific provisions of a standard. The term is only used in South Africa. NRCS is mandated to advise the Minister on

¹⁰³SABS website

¹⁰⁴Registration Of Manufacturers, Builders, Importers And Service Providers.National Regulator for Compulsory Specifications

matters related to compulsory specifications, and has historically managed the development process. The standard made compulsory must be a national (i.e. SANS) standard. In the absence of a suitable national standard another type of standard or specification may be made mandatory. The NRCS also issues consumer alerts when they are aware of any substandard products.¹⁰⁵

Some of the main industries regulated by the NRCS are:

- Cleaning and sanitation
- Construction materials
- Electro Technical
- Environmental protection
- Fire arms
- Fire prevention
- Food and associated industries
- Gaming and gambling
- Metrology
- Personal protective equipment
- Vehicles and components

2.2.2.3. *Customs and Excise*

All importers and exporters in South Africa are required to register with the Commissioner of the South African Revenue Service (SARS). Form DAI85 for importers and exporters, as well as clearing agents and warehouse licensees, must be completed and submitted to SARS. Companies registered with SARS will need to renew their registration every three years as per the amended Customs Act (No. 91 of 1964).

(a) *Permits*

Most goods may be imported into South Africa without restriction. However, the importation of certain goods specified by government notice is only permitted subject to the issuance of an import permit. All second-hand goods, including waste and scrap of whatever nature, require an import permit. For goods subject to restriction, importers must be in possession of the required permit before the goods are shipped. Permits are issued by the International Trade Administration Commission of South Africa (ITAC).

A number of products are subject to export control and licensing. Exporters should apply directly to the government agency that controls the specific permit in question. Currently, restrictions exist on

¹⁰⁵ NRCS website

strategic goods (exhaustible resources); agricultural products and metal waste and scrap. Metal scrap must first be offered to downstream manufacturers at a discount to the price at which it can be exported (15% discount for non-ferrous; 7.5% for ferrous). If manufacturers turn down the offer, an export permit may be issued.¹⁰⁶

(b) Customs

The South African Customs Administration plays an integral role in the facilitation of movement of goods and persons entering or exiting the borders of the Republic. The core functions are to:

- Enforce Customs as well as related trade laws;
- Collect duties and taxes;
- Ensure the social welfare of the citizens of the Republic by controlling the import and export prohibited and restricted goods;
- Ensure timely clearance of goods and facilitate the speedy movement of travellers through South African borders; and
- Support our integration into the global economy in a way that benefits all South Africans.

The mandate of SA Customs includes to:

- Facilitate legitimate trade and travel while ensuring compliance;
- Control and account for all imports and exports;
- Collect and bring to account all revenue due to the State;
- Administer specific industry schemes, trade measures, international protocols and other international obligations;¹⁰⁷
- Eradicate smuggling and other transgressions through enforcement action; and
- Enforce controls on the importation and exportation of prohibited and restricted goods on behalf of other authorities administering such law.

(c) Excise

Excise duties in South Africa are collected by the SA Revenue Service. The basis for the imposition of Excise duties and levies is primarily fiscal by nature, meaning that it is levied to provide the State with an easy collectable and constant stream of revenue. For this reason, the criteria used to select a product suitable for this purpose (excisable product) is basically that it should be fast-moving, high-

¹⁰⁶South Africa Investors Handbook 2011/2012. Dti & Deloitte.

¹⁰⁷South African Customs And Excise. SARS

volume, daily consumables and, in addition to this, mostly non-essential products (e.g. alcohol and tobacco products); hence the popular name “*Sin Taxes*”.

The main function of Excise is to protect and collect revenue due to the State on certain specified products, locally manufactured or imported. In principle, such revenue is collected only if the product is actually consumed locally; i.e. within the borders of the SACU (Southern African Customs Union). A secondary function of these duties and levies is to influence consumer behaviour, meaning that Government may manipulate Excise duties and levies to discourage the consumption of certain harmful products; i.e. harmful to human health (tobacco products) as well as harmful to the environment (plastic bags, etc.) ¹⁰⁸

i. Specific Excise Duty Products (based on specific quantity or volume) include:

- Fuel/Petroleum Products
- Tobacco Products
- Malt Beer
- Traditional African Beer
- Spirits/Liquor Products
- Wine
- Other Fermented Beverages

ii. Ad Valorem Excise Duty Products (based on value per item) include:

- Motor Vehicles
- Electronic Equipment
- Perfumeries

iii. Environmental levy: the government imposes a levy on products deemed hazardous to the environment with the purpose of protecting and conserving the local ecosystem. Currently, the levy applies to locally manufactured and imported plastic bags.

(d) Customs clearance procedures ¹⁰⁹

i. Import process

The clearance of imported goods generally takes a maximum of 24 hours for airfreight and two to three days for sea freight, depending on the port of entry. All required documentation must be

¹⁰⁸South African Customs And Excise. SARS

¹⁰⁹Ibid.

submitted to Customs and Excise before goods can be cleared through customs. Most transactions are covered by a bill-of-entry (Form SAD500).

Other documentation required is:

- Commercial invoice.
- Prescribed certificate of origin when preferential duty rates are claimed.
- Negotiable copy of bill of lading or equivalent document.
- Import permit, if required.
- Rebate permit 470.03 (if applicable) for raw materials to be processed and re-exported.
- Payment, by a bank guaranteed cheque, for all applicable duties and taxes (incl. VAT), if not qualified for a deferment.

ii. Export process

All required documentation must be submitted to Customs and Excise before goods can be cleared through Customs. Most transactions are covered by a bill of entry, Form SAD500. Customs can process paperwork within 24 hours. All exports must reflect payment from the receiver of the goods.

Other required documentation:

- Export invoice
- Transport document
- Export permit (if required)

Most Customs offices accept electronic versions of required documentation to expedite the clearance process. SARS may request that the electronic version be supported by additional documentation. The importer and/or the freight forwarder need to keep all customs related documentation for a period of at least five years.¹¹⁰

Bonded warehouses

Secure bonded warehouse facilities are available at all points of entry and may be used to store imported goods without payment of duties until required for use, resale, or re-export. Goods withdrawn from a bonded warehouse are liable for the duty applicable only if cleared out of bond for home consumption.

Customs and excise warehouses

¹¹⁰South Africa Investors Handbook 2011/2012. Dti & Deloitte.

These warehouses allow the deferment of the payment of customs duties and import VAT on goods subject to customs duty. Payment is only due at the time the goods are removed from the warehouse. Certain manufacturing operations may also be undertaken in these warehouses subject to special prior approval being received from the Customs authorities. Special dispensations are applicable to exporters if the goods are not subject to customs duty.

Anti-dumping, countervailing and safeguard measures

ITAC conducts anti-dumping, countervailing and safeguard investigations in terms of the International Trade Administration Act. Anti-dumping, countervailing and safeguard duties can be imposed in addition to the prevailing rate of customs duty applicable to the product being imported. Safeguard quotas can be imposed in the case of safeguard investigations. A product is considered dumped when it is exported to the Southern African Customs Union (SACU) at a price that is less than its normal value. The normal value is defined as the domestic selling price of a product in the country of export or, in the absence of domestic sales, exports to another country or a constructed normal value.¹¹¹

2.2.2.4. The Department of Health

The Department of Health is mandated to oversee the health and safety of all citizens in South Africa. In this regard, it is assisted by various acts and legislation pertaining to workplace health and safety. The aim of these regulations is to ensure all employers 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, as per the Occupation health and Safety Act (No. 85 of 1993).

Furthermore, the DOH aims to:

1. Increase life expectancy
2. Decrease maternal and child mortality
3. Combat HIV and AIDS and decrease the burden of disease from TB
4. Strengthen health system effectiveness

The aspects relating to Compensation for occupational injuries and diseases were iterated in 2.2.1.3. (a) of this document when discussing the department of Labour. This heading aims to inform

¹¹¹ South Africa Investors Handbook 2011/2012. Dti & Deloitte.

aspects relating to specific health issues in the workplace, such as HIV/AIDS, Tuberculosis, First Aid and health standards at work such as ventilation, smoking, etc.

The Occupational Health and Safety Act identifies various hazards which employers should be cognisant of. These include:

- *Physical hazards:* Ionising and non-ionising radiation, noise, vibration, heat, cold, ventilation, illumination, electricity, fire, sharps
- *Chemical hazards:* Natural and synthetic compounds that may be in the state of a dust, gas, vapour, or fluids
- *Biological hazards:* Viruses, fungi, parasites, algae, and bacteria
- *Ergonomic hazards:* Equipment, tools, work processes, poor lighting
- *Mechanical hazards:* Trip, slip, fall, unsafe and unguarded equipment, confined spaces, obstructed work areas and passageways
- *Psycho-social hazards:* Aggression, violence, shift work, emotional stress, work tolerance, poor interpersonal relationships, fatigue.

2.2.2.5. *The Department of Tourism*

The Tourism Industry falls under the Department of Tourism that administers all aspects relating to hospitality, accommodation and travel.

The sector is divided into three main categories:

(a) Accommodation

- hotels
- resort properties and timeshare
- bed and breakfasts
- guesthouses
- game lodges
- backpackers and hostels

(b) Hospitality and Related Services

- restaurants (not attached to hotels)
- conference venues (not attached to hotels)
- professional catering
- attractions
- consulting and professional services companies

(c) Travel Distribution Systems

- tour wholesalers

- tour operators
- travel agents
- tourist guides
- car rental companies
- coach operators

Some of the regulations applicable to this industry are discussed in the following sections.

The Tourism BEE Charter

This Charter applies to all privately owned enterprises within the Tourism Sector, and to all parts of the value chain in that sector, as outlined above. The Charter is closely aligned with the Codes of Good Practice for BEE as outlined by the dti. The Tourism Sector is a people-driven sector in which people provide the services and the interactions which determine the quality of our tourism services and products. The basic premise of the Charter takes this into account.

The Scorecard measures three core elements of BEE:

- direct empowerment through ownership and control of enterprises and asset (Ownership and Strategic Representation);
- human resource development (Employment Equity and Skills Development); and
- indirect empowerment through preferential procurement and enterprise development (Preferential Procurement, Enterprise Development and Social Development)

The Tourism Sector committed to attaining an overall level of ownership by black people of enterprises in that sector of 21 percent within five years of the commencement of the Scorecard, for the period ending 31 December 2009 and 30 percent within ten years, for the period ending 31 December 2014. *Businesses with a turnover of less than R5 million per annum are exempted from the Ownership requirement.* All tourism charter requirements are regulated by the newly formed Tourism Charter Council, which will commence operations on 01 October 2012. ¹¹²

Tourism Grading Council of South Africa

Grading of tourism establishments is not compulsory, but it is recommended (particularly for accommodation establishments). Restaurants can also be graded, and there is a plan for Tour Operator's vehicles to be graded. Grading is done by a physical inspection of facilities yearly, which must be conducted by an accredited grading assessor. The Tourism Grading Council of South Africa

¹¹²Tourism BEE Charter. 2005. Dept of Environmental Affairs and Tourism.

(TGCSA) is the authority in charge of grading facilities and is the only officially recognised quality assurance body for tourism products in South Africa. Establishments who have been graded by an Accredited Grading Assessor and display the TGCSA Star insignia provides assurance of quality and service excellence to domestic and international visitors. It is important for all tourism industry members to use and promote Star Graded establishments, to help bring about the high levels of quality assurance and value for money.¹¹³

Tour or tourist transport businesses

Anyone wishing to operate a tour or tourist transport business must comply with the following legislation:

- Vehicles must have clearance or roadworthy certificates to transport fare-paying passengers. These are available at a local licensing authority.
- Vehicles require Public Road Carrier Permits to transport fare-paying passengers. These can be obtained at the Provincial Department of Transport.
- If vehicles cross country borders, the tour operator requires cross-border transport permits available from the Cross-border Road Transport Agency in Pretoria.
- Appropriate insurance is required by all tour operators, both General Public Liability and Passenger Liability.¹¹⁴ The Southern African Tourism Services Association (SATSA) recommends a minimum of R5 million for a vehicle carrying 5 – 7 passengers should be in place. The policy should be in the name of the company and the cover is applicable to each vehicle. Recommended cover for vehicles carrying more than 7 passengers (calculate the cover based on ± R1 million per passenger).
- A driver of tourists must have a Professional Driving Permit (PrDP). This is issued by the Traffic department based on a normal driving license & the applicant is subject to a medical examination & a check for any criminal convictions.
- Any operator providing a guided tour is required to use a Tourist Guide who is qualified & Dept of Economic Affairs and Tourism (DEAT)/ Field Guides association of South Africa (FGASA) accredited. It is illegal to guide a tour without the necessary qualification.¹¹⁵

Tourist guides

All tourist guides need to register as a tour guide as per the Tourism Second Amendment Act No. 70, 2000. Tourist guides must re-register every two years, must have completed training as prescribed by the Tourism, Hospitality and Sport Education and Training Authority (THETA) and

¹¹³Tourism Grading Council of South Africa

¹¹⁴SME Toolkit SA. Business Partners Ltd. International Finance Organisation

¹¹⁵Requirements to become a Tour Operator. SATSA 2003

must have undergone assessment by an accredited THETA assessor. Training is also provided by THETA accredited training institutions. Registration is simply not possible without sufficient knowledge of history, geography, fauna, flora, climate, availability of medical and emergency services, background and culture of the different peoples, infrastructure of the tourism industry and the economic circumstances in, and of the geographical area in question. Without this registration, the Tourism Act does not permit an individual to operate as a tourist guide; and even with it, a person is only permitted to operate in respect of the class of guide as set out in the registration certificate. The National Department of Environmental Affairs and Tourism and the various provincial tourism authorities keep a register of tourist guides.

Bed and Breakfast and Guest House establishments

Before a person can start a bed and breakfast or Guesthouse venture, plans must be approved by the Town Planning Department of the local council. If approval is granted, the venture needs to be registered and obtain a trading license from the Licensing Department. Furthermore, the business must also register with the regional Services Board and with Inland Revenue as a business sole proprietor, close corporation (cc) or private company (Pty).

No person may operate a bed and breakfast or a guest house facility on any premises unless he or she has complied with all applicable legislation, including:

- The National Building Regulations and Building Standards Act (No. 103 of 1977) where all buildings constructed on the premises must comply with this Act and its regulations;
- The Council's applicable Town Planning Scheme with specific reference to parking, floor area ratio, height, coverage and zoning, number of rooms, if prescribed by a Town Planning Scheme applicable to the area where the property is located and with Council's Outdoor Advertising Bylaws with reference to signage.
- The Foodstuffs, Cosmetics and Disinfectants Act (No. 54 of 1972) and the Regulations governing general hygiene requirements for food premises and the transport of food, formulated under the Health Act (No. 63 of 1977), where a Certificate of Acceptability must be obtained from the Council's Senior Health Inspector.
- The Broadcasting Act (No. 4 of 1999) if the room is supplied with a television set;
- The South African Music Rights Organisation (SAMRO) where a license is required if background music is to be played to the guests;
- The Free State Gambling and Liquor Act (No. 6 of 2010) if liquor, including complimentary drinks, are served to guests;

- The Tobacco Products Control Act (No. 83 of 1993) where it is a requirement that signs are displayed in areas designated for smoking and no -smoking signs are displayed elsewhere.

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Other legal requirements specific to Free State Tourism operators

Some of the legal permits required by tourism establishments, especially game farms, lodges, etc. are inter alia:

- Hunting permit
- Application to keep wild animals
- Application for adequate fencing,
- Request for international visitor to hunt out of season or endangered species.
- Legislation regarding licensing and possession of firearms and hunting rifles in terms of the Firearms Control Act (No. 60 of 2000).

Registration of guests

The legal requirements of Section 7 of the Immigration Act (No. 13 of 2002), as detailed under Section 40 of the Immigration Amendment Act, requires that every person in charge of any premises, whether furnished or unfurnished, where lodging or sleeping accommodation is provided for payment or reward, shall, keep a register of all persons provided with lodging, and every person shall sign the register and furnish the prescribed personal particulars. Failure to keep a detailed record of your guests would be breaking the law, and could make you liable for prosecution.

2.2.2.6. *National Home Builders Registration Council*

By law, all home builders have to be registered with the council, and have to comply with its building quality standards. There is also a warranty scheme in place, which covers "major structural defects" caused by poor workmanship. Noncompliance and deviation from plans and specifications is also covered. The main Law that governs the NHBRC is the Housing Consumer Protection Measures Act 1998, (Act no.95 of 1998) as amended and its commensurate promulgated regulations.¹¹⁷

2.2.2.7. *Engineering Council of South Africa*

The Engineering Profession Act (No. 46 of 2000) as well as other Acts provide for the reservation of work of an engineering nature for the exclusive performance by registered persons. While compulsory registration under this is still being developed, examples of work reservation in terms of other legislation can be found in the:

¹¹⁶Bed And Breakfast And Guest House Standard By-Law Free State Provincial Gazette December 2011 - No. 170 Of 2011

¹¹⁷The NHBRC Legislative Environment. National Home Builders Registration Council.

- National Water Act (No. 36 of 1998) (Section 11(7)) - in terms of which an approved professional person must be "approved" before being permitted to undertake certain dam safety related tasks;
- National Building Regulations and Building Standards Act, 1977 and regulations, in terms of which a "competent person" is defined as a person registered with ECSA;
- Lifts, Escalators and Passenger Conveyor Regulations promulgated in terms of the Occupational Health and Safety Act, 1993.¹¹⁸

2.2.2.8. **Bargaining Councils**

Trade unions and employers' organisations may form bargaining councils. Bargaining councils deal with collective agreements, solve labour disputes, establish various schemes and make proposals on labour policies and laws. Many employers are required by law to register with industry-specific bargaining councils which then dictate the terms and conditions of employment in the particular sector. All bargaining councils are funded by levies payable on a 50/50 basis by employers and employees.

The main powers and functions of a bargaining council are to:

- make and enforce collective agreements;
- prevent and resolve labour disputes;
- establish and manage a dispute resolution fund;
- promote and establish training and education schemes;
- establish and manage schemes or funds to benefit its parties or members; and
- make and submit proposals on policies and laws that affect a sector or area.¹¹⁹

There are various bargaining councils in existence for all forms of trade. Some of these councils are:

- Motor Industry Bargaining Council
- Bargaining Council for the Entertainment Industry of SA
- Worsted Textile Manufacturing Industry (Cape)
- Public Service Co-ordinating Bargaining Council
- Education Labour Relations Council
- Public Health and Welfare Sectoral Bargaining Council
- Safety and Security Sectoral Bargaining Council
- General Public Service Sectoral Bargaining Council
- Hairdressing and Cosmetology Services (Semi-National)
- Jewellery and Precious Metal Industry (Cape)

¹¹⁸ ECSA Statutory Functions. Engineering Council of South Africa. 2011

¹¹⁹ Section 28, of the *Labour Relations Act*

- Knitting Industry (Northern Areas)
- Laundry, Cleaning & Dyeing Industry (Cape)
- Leather Industry (National)
- Liquor, Catering and Accommodation Trades (South Coast Natal)
- Metal and Engineering Bargaining Council (National)
- Millinery Industry (Northern Areas)

(Please note: This is not a comprehensive list of all bargaining councils.)

It is the employer's responsibility to investigate whether the business should apply to a bargaining council and pay the required fees. The Bargaining Council will have certain bargaining Council levies and may provide for inter alia, a provident fund for its members, medical cover, as well as trade union fee deductions.

2.2.2.9. *Sector Education and Training Authorities*

As per the Skills Development Act, a skills fund exists and an employer must pay the Skills Development Levy or SDL if the employer pays annual salaries, wages and other remuneration in excess of R500 000. Employers with an annual payroll of R500 000 or less (whether registered for employees tax purposes with SARS or not) are exempt from this levy. The levies provide funding for the Sector Education and Training Authorities, which are government bodies responsible for organising education and training programmes within a specific sector. Each sector has its own SETA. The levy is mandatory, but it is not compulsory for a business to join a SETA or implement SETA programmes in the workplace. Should a business wish to apply for SETA training, various advantages are available.

By becoming actively involved in skills development, a company can address three major concerns of every business:

- Improving employee wellness as employees are developed into skilled, qualified individuals.
- Improving productivity as skilled employees tend to complete the correct tasks in the correct way, and on time.
- Improving the bottom line, by being able to claim back, through various SETA products, up to 70% of the Skills Development Levy paid to SARS.¹²⁰

¹²⁰ Basic Guide to registering for the SDL. 2008. Dept of Labour.

2.2.2.10. *Department of Agriculture, Forestry and Fisheries*

(a) Legislation

Any person wishing to start an agri-business or business relating to agricultural goods must conform to the regulations as stipulated by the Department of Agriculture, Forestry and Fisheries. Various acts exist pertaining to land use, use of fertilisers, environmental safety and sustainability, etc. These include, but are not limited to, the following:

- Fertilizers, Farm Feeds, Agricultural Remedies Act (No. 36 of 1947)
- Genetically Modified Organisms Act (No. 15 of 1997) Environment Conservation Act (No. 73 of 1989)
- Conservation of Agricultural Resources Act (No. 43 of 1983) (also known as CARA) National Veld and Forest Fire Act (No. 101 of 1998)
- Agricultural Product Standards Act, 1990 (No. 119 Of 1990)
- The Marketing Of Agricultural Products Act (No. 47 Of 1996)

It is the responsibility of any prospective agri-business to ascertain which regulations must be adhered to, depending on the type of agricultural enterprise, i.e. animal husbandry, game farming, horticulture, plantations, organic farming, etc.

The Directorate Food Safety and Quality Assurance of the Department standardises quality norms for agricultural and related products by establishing the criteria for such norms and distributing the information to all interested parties. These criteria may include the quality, packaging, marking and labelling as well as the chemical composition and microbiological contaminants of the products. The Directorate also manages the food safety of import and export of agricultural produce, food safety and system certification, as well as the registration of Food Business Codes and factories for the canning, freezing, drying, manufacturing of jams, jellies and marmalades, as well as packaging of produce.

(b) Statutory measures

The Marketing of Agricultural Products Act (No. 47 Of 1996) establishment of statutory measures, namely registration, records and returns, statutory levies, and the control of exports of agricultural products. Once a statutory measure is approved and promulgated in the Government Gazette by the Minister of Agriculture, Forestry and Fisheries, it becomes enforceable and legal action may be taken against those who fail to adhere to it. The MAP Act stipulates that any directly affected group may apply for statutory measures, namely statutory levies, control of the export of agricultural products,

records and returns, and registration, provided that the procedures prescribed in Section 10 of the Act are followed.¹²¹

A statutory levy is a charge per unit of an agricultural commodity at any point in the marketing chain between the producer and the consumer, which is collected for specific functions such as funding for research, information, or transformation. Currently, statutory levies are applicable to such produce as citrus, cotton, dairy, deciduous fruit, pork, potatoes, poultry and eggs, red meat, wool, etc. It is advisable that any new producer check with the Agricultural Department to ensure compliance.

Registration is a statutory measure that specifies the persons in a value chain who should register in a specific commodity. For example, all exporters and all producers must register with the Citrus Growers' Association (CGA) and all exporters and all producers must keep such records and render the returns as may be required by the CGA relating to export citrus fruit produced, received, sold, exported, or otherwise utilised. The same measures apply to Cotton SA, the Deciduous Fruit Producers' Trust, Dried Fruit Technical Services, Milk SA and many other agricultural organisations. Once again, an aspirant business must ensure compliance with the relevant organisation to which it will belong.¹²²

2.3 Broader Regulatory Requirements

In the previous section, the key business and commerce institutions involved in business registration were reviewed. This section aims to deal with the broad regulatory requirements as they pertain to business start-up. Most of the general requirements were addressed in the previous section under their various institutional descriptions. Therefore, only a brief summary of such regulations will be given. In addition, some salient aspects of other broad regulatory requirements will be addressed, such as environmental considerations and BEE.

2.3.1. Broad Based Black Economic Empowerment

The concept of B-BBEE was discussed in section 2.1.6 of the report in elucidating the the B-BBEE Act of 2003. In terms of the Codes of Good Practice on Broad-Based Black Economic Empowerment, the compliance requirements for B-BBEE varies according to the size of the entity, as measured by a company's annual turnover. Broad-Based Black Economic Empowerment is measured using seven pillars, each with a relative weighting. Unlike Narrow Based Empowerment, Ownership & Management account for only 30% of the total contribution.

¹²¹Status Report On Statutory Measures Implemented In Terms Of The Marketing Of Agricultural Products Act No. 47 Of 1996. 2010. NAMC

¹²²Status Report On Statutory Measures Implemented In Terms Of The Marketing Of Agricultural Products Act No. 47 Of 1996. 2010. NAMC.

- Direct Empowerment:
 - o Equity Ownership – 20%
 - o Management – 10%
- Indirect Empowerment:
 - o Employment Equity – 15%
 - o Skills Development – 15%
 - o Preferential Procurement – 20%
 - o Enterprise Development – 15%
 - o Socio-economic Development – 5%

If a company's annual turnover is less than R5 million per annum, such an enterprise is classified as an Exempt Micro Enterprise (EME), which means it is classified as a Level 4 or Level 3 Contributor to B-BBEE. The company's clients can claim at least 100% of their procurement spent with the company. Should a company's turnover be between R5 million and R35 million per annum it is classified as a Qualifying Small Enterprise (QSE). Although the scorecard consists of seven sections, these entities are only measured on the best four towards their own B-BBEE scorecard. Companies with a turnover of over R35 million per annum need to comply with the Generic scorecard, which consists of seven sections. The company specific information is tested against the various criteria in each section.

It is not mandatory to get a verification agency to audit a BEE Scorecard. It is however a requirement to have suitable documentation/evidence to score any points. SANAS (South African National Accreditation System) has been mandated with accrediting the Verification Agencies. This accreditation has been put in place in order to ensure the consistency of the independent verification of B-BBEE contributions. BEE Certificates can be issued by any Verification Agency so long as they are approved to do so by SANAS. The Certificate can only be issued once a full verification has been performed and the documentation presented by your company has been verified.

On the certificate, the following information should be listed:

- Company name and number
- Type of Certificate (Group/Entity/Division)
- BEE Category (EME/QSE/Generic)
- BEE Level (1-8)
- Procurement Recognition %
- Black Ownership %

- Black Women Ownership %
- Value Adding Supplier (Yes/No)
- Certificate Issue Date
- Certificate Expiry Date

No additional information is required to be provided to a business' customers. A BEE Certificate is sufficient evidence of a business' B-BBEE Compliance.

2.3.2. Health and Safety

2.3.2.1. Occupational Health and Safety

Occupational diseases are illnesses caused by substances or conditions that the worker was exposed to at the workplace. One can claim compensation if one is exposed to these working conditions and then get the related disease. The working conditions and diseases caused by these conditions that are covered by the Compensation Fund are set out in Schedule 3 of the Act. A person can claim for other disease if you can prove using medical evidence and reports that the disease was caused by conditions at work. The Fund also covers injuries that were sustained as a result of work or at the workplace.¹²³

There are five kinds of compensation:

- Temporary disability
- Permanent disability
- Death
- Medical expenses
- Additional compensation

The Compensation Fund covers workers who:

- were hurt in an accident while they were busy with their work
- contracted a disease through their work
- died from a workplace accident or occupational disease.

A person may claim if he/she was injured or contracted a disease while

- working (permanent or casual)
- training
- completing an apprenticeship

¹²³ Claiming Compensation for Occupational Injury or Diseases: Dept. of Labour

There are certain categories of worker who cannot claim from the fund. For example, one cannot claim if one is:

- a domestic worker employed at a private home
- a member of the South African National Defence Force (there is a separate fund)
- a member of the South African Police Services (there is a separate fund)
- a worker who doesn't work under the control of your employer
- a worker who works outside South Africa for more than 12 months at a time.

A person may, however claim, if he/she is:

- a domestic worker in a boarding house
- an apprentice or trainee farm worker
- a worker paid by a labour agency.

Claims will only be paid if they are submitted in the correct way in the proper time. Claims will not be paid if:

- The claim is made more than 12 months after the accident or death, or after the disease is diagnosed.
- The injured person is off work for 3 days or less.
- The accident resulted from a person's own wrong doing (Unless the worker is seriously disabled or dies in the accident, then the Fund will still pay compensation).
- The injured person unreasonably refuses to have medical treatment.

2.3.2.2. Health and Safety in the workplace

It is every employer's responsibility to ensure the workplace is as far as possible protected against these hazards. Preventions and precautionary measures should be set out in a health and safety plan which is accessible to all employees.

These measures should include, inter alia, factors related to:

- Lighting
- Ventilation
- Fire prevention and escape plan including adequate fire equipment checked every year, as well as suitable fire exits.
- Thermal requirements
- General building upkeep, such as floors, windows, ceilings etc. in good condition
- Noise and hearing conservation
- Precautions against flooding

Some other salient aspects in the Act are discussed below.

(a) First Aid

The Draft General Health and Safety Regulations were gazetted on 28 October 2005 (Government Gazette, No. 28162). Regulation 7 of the regulations provides the specifications relating to First aid, emergency equipment, and procedures.

The regulation states that "an employer shall take all reasonable steps that are necessary under the circumstances, to ensure that persons at work *receive prompt first aid treatment* in case of injury or emergency."

i. The appointment of first aiders

Where *more than 10 employees are employed at a workplace*, the employer needs to *appoint a first aider*. This is a compulsory legal appointment and the first aider should be readily available during normal working hours.

ii. Ratio of first aiders

Shops and offices require one first aider for every 100 employees. In other workplaces one first aider for every 50 employees is required.

iii. Competency of the first aider

The first aider should be in possession of a valid first aid certificate, issued by a person or organisation approved by the chief inspector for this purpose.

Where pesticides, hazardous chemical substances or hazardous biological agents are used, handled, processed or manufactured the first aid worker should be trained in the first aid procedures that are necessary for the treatment of injuries that may result from such activities.

iv. In the case of injuries or wounds

Employees duty: an employee suffering from an open wound, cut, sore or any similar injury, who works where hazardous chemical substances or hazardous biological agents is used, handled, processed or manufactured, shall report such injury to his employer as soon as possible.

The employer's duty: the employer may not permit such person to continue working before the injury has been cleaned with soap and water or with a diluted disinfectant and suitable dressed to eliminate blood or bodily fluids seepage through the dressing, where necessary.

v. Emergency equipment

Eye-wash fountain and similar facilities are essential where an employee is exposed or may be exposed to a potential hazard of injury to the eye through contact with a hazardous biological agent or hazardous chemical substance, the employer shall make sure that there is an eye-wash fountain, or any similar facilities, in the immediate vicinity of the workplace of such employee and that the employee is trained in the use thereof.

Deluge showers are mandatory where an employee is exposed to a potential hazard of injury to or absorption through the skin as a result of sudden contact with a large amount of hazardous chemical substances or hazardous biological agents, the employer shall make sure that there is a fast-reacting deluge shower with clean water, or similar facility in the immediate vicinity of the workplace of such employee and that the employee is trained to use such facility in the use thereof.

Where more than five employees are employed at a workplace, the regulation states that first aid facilities must be provided. The employer must provide a first aid box or boxes at or near the workplace, available and accessible for the treatment of injured persons at that workplace." ¹²⁴

(b) Personal protective equipment and facilities

Employers must as far as reasonably practicable, protect persons at work. Workers and other persons like visitors, contractors and suppliers have the right to be protected from harm caused by failure to take reasonable and practicable control measures. The employer or user of machinery is obligated by law to take the necessary steps in order to provide a safe and health work environment. In order to provide a safe and health work environment the employer or user of machinery should evaluate the risk attached to any condition or situation which may arise from their work activities.

Section 8(2) (d) of the Occupational Health and Safety Act (OHS Act) stipulates that the employer must establish, as far as is reasonably practicable, what hazards to the health or safety of persons are attached to any work which is performed. The section also stipulates that employers must establish what precautionary measures should be taken in order to protect the health and safety of persons and provide the necessary means to apply such precautionary measures. ¹²⁵

Such equipment include, inter alia:

¹²⁴South African Labour Guide. T. Boshoff

¹²⁵South African Labour Guide. T. Boshoff

- goggles, spectacles, face shields, welding shields,
- visors, hard hats, protective helmets, caps, gloves, gauntlets,
- aprons, jackets, capes, sleeves, leggings, spats, gaiters,
- protective footwear, protective overalls, or any similar personal
- protective equipment or facility of a type that will effectively
- prevent bodily injury;
- waterproof clothing, high visibility clothing, chemical resistant
- clothing, low temperature clothing, chain mail garments,
- waders, fire retardant or flame proof clothing, ice jackets, or
- any similar personal protective equipment of a type that will
- effectively protect the wearer thereof against harm ¹²⁶

(c) Intoxication

Subject to the provisions of sub-regulation (3), an employer, self-employed person or a user, as the case may be, shall not permit any person who is or who appears to be under the influence of intoxicating liquor or drugs, to enter or remain at a workplace. Subject to the provisions of sub-regulation (3), no person at a workplace shall be under the influence of or have in his or her possession or partake of or offer any other person intoxicating liquor or drugs.

An employer, self-employed person or a user, as the case may be, shall, in the case where a person is taking medicines, only allow such person to perform duties at the workplace if the side effects of such medicine do not constitute a threat to the health or safety of the person concerned or other persons at such workplace. Where an employee is taking medication, which in the opinion of a medical practitioner or pharmacist may impair the employee's judgment or ability to perform work safely, that employee is obligated to inform the employer.

(d) Admittance of persons

Subject to the provisions of section 8 of the Act, an employer, self-employed person or user, as the case may be, shall not permit a person to enter a workplace where the health or safety of such person is at risk or may be at risk, unless such person enters such workplace with the express or implied permission of and subject to the conditions laid down by such employer or user: Provided that such express or implied permission shall not apply in respect of an inspector or any other person entitled by law to enter such workplace or premises. An employer, self-employed person or a user, as the case may be, shall, if he deems it necessary in the interests of health and safety, post up

¹²⁶*Draft General Health and Safety Regulations*. 2005. Government Gazette 28162

a notice at every entrance to a workplace prohibiting the entry of unauthorised persons to such workplace and no person shall enter or remain at such workplace without the permission of the employer or user, as the case may be.

(e) Prevention of transmission of HIV, Hepatitis Virus and other Blood-borne Diseases

An employer shall take all reasonable steps to promote the use of standard precautions for the prevention of the transmission of the human immunodeficiency virus, hepatitis B and any other blood-borne pathogens in the workplace; and to ensure that all his or her employees receive adequate training in the use of standard precautions for the prevention of the transmission of the human immune-deficiency virus, hepatitis B and any other blood-borne pathogens in the workplace.

(f) Use and storage of flammable liquids

No employer shall require or permit any person to work in a place where the vapour of any flammable liquid is generated to such an extent that it constitutes an actual or potential fire or explosion hazard or endangers the health or safety of any person, unless the provisions of sub-regulations (2) to (12) of this regulation are complied with.

(g) Work in confined spaces

An employer or user of machinery shall take steps to ensure that a confined space is entered by an employee or any other person only after the air therein has been tested and evaluated by a person who is competent to pronounce on the safety thereof, and who has certified in writing that the confined space is safe and will remain safe while any person is in the confined space, taking into account the nature and duration of the work to be performed therein.

(h) Smoking in the workplace

The Tobacco Products Control Act provides for the protection of non-smokers and does not provide any benefit or protection for smokers.

Smoking in the workplace is not regulated by Labour Law but only by the above-mentioned Act. In terms of this Act, the employer is obliged to take steps to protect his non-smoking staff from the cigarette smoke of the smokers. There is no obligation whatsoever on the employer to provide smoke breaks, and indeed if he does provide smoke breaks he is entitled to insist that those employees must work in the time taken for 'smoke breaks' after hours, without additional remuneration, or he can total up the 'smoke breaks time' and deduct it from wages at month end. The employer is entitled to ban smoking completely on his building or in the workplace if he wishes

to, and he can designate any area of his choice to be the smoking area. The Free State Department of Health's website has various checklists available for employers and their health and safety representatives to check if they comply with regulations.¹²⁷

(i) Food Control

The food control section within the department of Health is responsible for ensuring the safety of food in South Africa. This service is based on the basic needs of communities and the right of South Africans to make informed food choices without being misled.

The main functions of food control include to -

- Administer food legislation. This includes developing and publicising regulations for food safety, food labelling and related matters as well as developing technical guidelines where necessary
- Inform, educate and communicate to industry, consumers, the media, government departments and other stakeholders about food safety and related matters
- Audit and support Port Health Services in the provinces related to the control of imported foodstuffs. Audit and support Municipal Health Services in metros and district municipalities related to law enforcement, monitoring, information, education and communication and other activities
- Evaluate risk assessments related to agricultural chemicals and food produced through biotechnology for the departments of agriculture and forestry and fisheries
- Co-ordinate routine and specific food monitoring programmes and attend to food safety alerts
- Act as South Africa's National Contact Point for the joint FAO/WHO Codex Alimentarius Commission (CAC), International Food Safety Authorities Network (INFOSAN) and the European Union Rapid Alert System for Food and Feed (RASFF)
- Convene or serve on national and international bodies that deal with food control matters.

¹²⁸

Regulations governing general hygiene requirements for food Premises and the transport of food as amended by Government Notice No. R.1125 of 8 August 2003 state that no individual may handle food without a certificate of acceptability. Such a certificate is obtainable from the local authority in which the premises resides and must be prominently displayed in the establishment. These regulations apply to all food premises, except those where only fresh, raw and unprocessed fruit and vegetables and other agricultural products are handled. The new regulations attempt to promote

¹²⁷ www.fshealth.gov.za

¹²⁸ Dept of Health

uniformity throughout the country, while also making provision for the diversity of circumstances that currently exist in various communities. A local authority which consists of the democratically elected representatives of a community, may grant an exemption in respect of any of the provision of the regulations to a person in charge of a food that constitute a health hazard. Such a local authority may also set additional requirement where a health hazard exists that is not provided for in the regulations.

Special matters that are regulated include facilities, on food premises, food containers, the display, the storage and temperature of food, protective clothing, duties of a person in charge of a food premises, duties of a food handler, the handling of meat, and the transport of food.

Food safety management also constitutes the following responsibilities of municipalities:

- Evaluating food premises and food transportation vehicles, and issuing certificates of acceptability to compliant premises.
- Monitoring compliance with legal requirements, and instituting remedial and preventative measures where applicable.
- Examining, sampling and analysing foodstuffs and examining food labels.
- Presenting workshops and educating people in both the formal and informal food sectors on food safety. ¹²⁹

All businesses handling or making food is required by law to have a HACCP system in place, meaning the hazard analysis and critical control point system that identifies, evaluates and controls hazards which are significant for food safety. Certification is done by an authorised certification body, accredited by SANAS(such as the SABS) HACCP is relevant to all sectors of the food industry, including primary producers, manufacturers, processors and food service operators. ¹³⁰

It is essential that any aspiring business owner wishing to operate a food or foodstuff business consult the department of Health regarding the various regulatory requirements contained in the Foodstuffs, Cosmetics and Disinfectants Act, no. 54 of 1972, as these are too numerous to mention in this section. These regulations relate to food additives, composition of food and compositional standards, the irradiation of food, contaminants, fortification and nutritional issues, hygiene, hazard control, labelling of foodstuffs, etc.

¹²⁹Regulations governing general hygiene requirements for food Premises and the transport of food. Amended by Government Notice No. R.1125 of 8 August 2003

¹³⁰Foodstuffs, Cosmetics and Disinfectants Act, no. 54 of 1972

2.3.3. Taxation

2.3.3.1. *Overview of business related taxes*

1. Tax year

The South African tax year runs from 1 March to 28/29 February each year.

2. Tax Rates

Income is taxed in South Africa in accordance with progressive tax rates, i.e. higher income is taxed at higher rates.

3. Registration requirements for individual income tax

All taxpayers who earn income exceeding R60 000 per annum are required to be registered as taxpayers with the South African Revenue Service (SARS). Individuals who earn in excess of R10 000 in investment income are required to register as provisional taxpayers. In addition to these stipulated instances, SARS reserves the right to classify any taxpayer as a provisional taxpayer.

4. Tax returns and payment of taxes

Tax returns are prepared annually and are typically due in the middle of July. Provisional taxpayers may be required to submit up to three provisional tax returns during the course of the year (August and February with an optional third return being due at the end of September). In most instances employees' tax (commonly referred to as PAYE) is withheld from earnings by employers on a monthly basis. An assessment will be issued by SARS to each taxpayer who submitted a tax return. This serves as proof of taxes paid.

5. Basis of taxation

The South African tax system is residence based. South African tax residents are subject to tax in South Africa on their worldwide income, while non-residents are liable for tax in South Africa only in respect of income from South African sources.

Tax residence is established either through being considered ordinarily resident in South Africa or through physical presence in South Africa over a period of six tax years. Although "ordinarily resident" is not defined in the Act, it is held to be the country that one considers to be one's real home.

An individual will trigger tax residence through physical presence during the sixth tax year of being physically present in South Africa if such individual was present in South Africa for more than 91 days during the current year of assessment and each of the 5 preceding years of assessment and present for a period exceeding 915 days in aggregate during the previous 5 years of assessment.

For ordinarily resident taxpayers, tax residence can be broken through a change in intention as substantiated by facts, typically on emigration from South Africa or at such time that an individual decides that he/she no longer considers South Africa to be his/her real home. Individuals who established tax residence through physical presence will break tax residence through physical absence for a continuous period of 330 full days.

6. Capital Gains Tax

Tax residents are subject to Capital Gains Tax (CGT) in South Africa on the disposal of their worldwide assets. Non-residents are subject to CGT in South Africa only on the disposal of fixed property, held directly or indirectly, located in South Africa. On breaking tax residence, CGT will be payable on the deemed disposal of a tax resident's worldwide assets (excluding South African fixed property), i.e. the growth in value from the date of establishing tax residence to the date of breaking tax residence will be regarded as a "capital gain" and CGT will be payable.

25% of the gain is included in the individual's taxable income and taxed at the applicable marginal tax rate. An annual exclusion of R16 000 is currently applicable to the aggregate gain or loss in any particular year.

7. SA tax on earnings for services rendered in and outside SA

As indicated above, non-resident for South Africa tax purposes are taxable in South Africa on income from a South African source or deemed to be from a South African source. In terms of the principles laid down by the courts, any income earned in exchange for services rendered in South Africa, will be taxable in South Africa as the source is in South Africa. Concerning other services that would be rendered outside South Africa, one needs to look at where the skills and labour of the person providing the services are exercised. Should the skills and labour be exercised in South Africa, the source of the income earned would be in South Africa.

8. Fringe benefit tax

Rental paid by the employer

The provision of housing to an employee is generally considered to be a taxable fringe benefit, subject to certain conditions. In terms of the Act, the value of the benefit is the greater of the benefit determined in accordance with a remuneration based formula (generally applied where the use of a company owned house is provided), and the total amount of the rentals payable for such accommodation by the employer, or associated institution in relation to the employer, and any other expenditure defrayed by the employer in respect of such accommodation. Where a cash housing allowance is granted to an employee, such allowance will be taxable as cash remuneration.

In the case of employer-provided accommodation, relief may be available in terms of Paragraph 9(7) of the Seventh Schedule in terms of which no taxable value shall be placed on any employer-provided accommodation while an employee is absent from his usual place of residence for the purposes of performing the duties of his employment. The length of time for which the benefit may continue to be provided tax-free is limited to two years.

The interpretation of sub-paragraph has been a contentious issue as the Act does not specifically define the phrase “away from his usual place of residence”. It is however important that each individual expatriate employee’s particular circumstances be evaluated in order to determine whether Paragraph 9(7) of the Seventh Schedule can be applied.

Use of motor vehicle provided by the employer

Generally, when an employee is granted the use of a company vehicle, that vehicle is essentially for the exclusive use of the employee and is used for both personal and business purposes. The provision of a company motor vehicle constitutes a taxable benefit in the hands of the employee, which is taxed at a rate of 2.5% of the determined value of the vehicle (excluding VAT) per month. Where an employee is granted the use of a second vehicle, the monthly taxable benefit is calculated at a rate of 4% of the determined value of the vehicle with the lower value, and 2.5% is applied to the determined value of the vehicle with the higher value. The determined value is the original cost of the vehicle to the employer if this was obtained under a bona fide agreement of sale. Where the vehicle is held by the employer under a lease, the determined value of the vehicle is the retail market value of the vehicle at the time the employer first obtained the right of use of the vehicle. In any other case, the determined value of the vehicle is the market value of such vehicle at the time that the employer first obtained the vehicle or the right of use thereof.

Medical aid contributions

In terms of paragraph 12A(c) of the Seventh Schedule, the cash equivalent of the value of the taxable benefit made to the employer during the year of assessment indirectly or directly, to a medical aid scheme registered under the Medical Schemes Act (No. 131 of 1998), for the benefit of an employee or his dependents that exceeds R 1140 in respect of the employee and one dependent plus R 345 for every additional dependant. Only medical aid schemes as defined by South African legislation may be eligible as a deduction. Medical contributions made, as well as expenses both in and out of South Africa not recovered by the contributor from his/her medical scheme will be deductible from his/her taxable income, to the extent that it exceeds 7.5 per cent of the taxable income in South Africa.

Pension fund and retirement annuity contributions

If an individual contributes to a local pension or retirement annuity fund, he/she is able to deduct the prescribed amount from his/her salary. For a pension fund, an amount of 7.5% can be deducted from an individual's pensionable salary, and for a retirement annuity fund, the greater of 15% or R 3 500 can be deducted from a person's non-pensionable salary. No deductions can be claimed in South African for any contributions made to foreign funds. However, where the employer is liable to contribute to the foreign fund, the contribution by the employer would not attract tax in SA.

9. Exchange control restrictions

Individuals considered resident for exchange control purposes are restricted in the amount of funds they are allowed to invest offshore. It should be noted that the concept of 'resident' as used for exchange control purposes differs from the concept of 'resident' for tax and immigration purposes.

10. Provisional Tax

Provisional tax forms part of the Pay as You Earn or PAYE tax system of the Income Tax Act No. 58 of 1962 (the Act) and Tax Administrative Act No. 28 of 2011. All individuals who receive income other than remuneration are provisional tax payers. It is not a separate tax but merely a mechanism to pay the Income Tax during the tax year in which the income is earned. By paying the amounts due in terms of Provisional Tax liability an individual will prevent large amounts of tax due on assessment, as the tax load is spread over the relevant year of assessment. In terms of paragraph 28, Provisional Tax payments are not refundable. These payments will be set off against the liability for normal tax for the applicable year of assessment. Companies automatically fall into the provisional tax system – a system that makes taxpayers provide for their final tax liability by paying at least two amounts in the course of the year of assessment. Final liability, however, is determined upon assessment.¹³¹

11. Turnover Tax

The 2011 National Budget Speech by the Minister of Finance on 23 February 2011 saw some changes in turnover tax for small businesses. It's important to be cognisant of such changes. Previously all businesses, irrespective of how big or small, had to register for income tax by law. In order to support small businesses and contribute to creating an enabling environment for them to survive and grow, SARS implemented a turnover tax, alternative simplified tax system, for small businesses with effect from 1 March 2009.

The changes with regards to this tax are as follows:

Turnover tax rates were lowered from 1 March 2011 so that a micro business only becomes liable to pay the tax if its annual turnover exceeds R150 000 (previously R100 000). This means that the

¹³¹Reference Guide Provisional Tax 2013: SARS

first R150 000 (previously R100 000) of taxable turnover of all businesses registered for turnover tax will be free of tax. Table 2.2 gives an indication of the new rates as they were applicable for 2011/2012 in comparison to 2010/2011. ¹³²

Table 2.2- Turnover tax Rates

Taxable turnover (R)	2010/11 Rates of tax	Taxable turnover (R)	2011/12 Rates of tax
R0 – R100 000	0% of each R1	R0 – R150 000	0% of each R1
R100 001 – R300 000	1% of the amount above R100 000	R150 001 - R300 000	1% of the amount above R150 000
R300 001 – R500 000	R2 000 + 3% of the amount above R300 000	R300 001 – R500 000	R1 500 + 3% of the amount above R300 000
R500 001 – R750 000	R8 000 + 5% of the amount above R500 000	R500 001 – R750 000	R7 500 + 5% of the amount above R500 000
R750 001 and above	R20 500 + 7% of the amount above R750 000	R750 001 and above	R20 000 + 7% of the amount above R750 000

(Source: SME Toolkit SA. Business Partners Ltd. International Finance Organisation)

12. Employees Tax

Where an employer pays or becomes liable to pay remuneration to an employee, the employer has an obligation to deduct Employees' Tax from the remuneration and pay the tax deducted to SARS on a monthly basis. In most instances, the employer is obliged to issue each employee with an Employees' Tax certificate [IRP5/IT3(a)] which reflects, amongst other detail, the Employees' Tax deducted. An employer must apply for registration for employees' tax purposes with SARS within 14 days after he / she becomes an employer unless none of the employees are liable for normal tax. ¹³³

2.3.3.2. Standard Income Tax on Employees

March 2011 saw the start of the phasing out of Standard Income Tax on Employees (SITE). SITE taxpayers who received more than one Employee Income Tax certificate [IRP5/IT3(a)] resulting in a

¹³²SME Toolkit SA. Business Partners Ltd. International Finance Organisation

¹³³Guide For Employers In Respect Of Employees' Tax (2012 Tax Year): Legal and Policy Division of SARS. 2011

combined income of more than the tax threshold for that tax year – please refer to section 3 – will now be required to submit an Income Tax return (ITR12) as of the 2012 year of assessment onwards. Tax returns must be submitted during the Personal Income Tax (PIT) Filing Season which commences 1 July each year. SITE is a component of the Pay-As-You-Earn (PAYE) method of paying Income Tax and is a final withholding tax on the first R60 000 of your net remuneration deducted by an employer.¹³⁴

Net remuneration is any amount of income paid or payable to a person, for example:

- Salary (which will appear as source code 3601 on the Employee Income Tax certificate [IRP5/IT3(a)])
- Pension (source code 3603)
- Bonus (source code 3605) etc.

Less allowable deductions, for example:

- Pension fund contributions (source code 4001/4002)
- Retirement annuity fund contributions (source code 4006/4007)
- Medical expenses (source code 4005)
- Income protection policy contributions (source code 4018)

All taxpayers whose net remuneration or annual equivalent did not exceed R60 000 were subject to SITE only and, therefore, were not required to submit an Income Tax Return (ITR12).

The SITE system is now being phased out because the tax collection system has been modernised and administrative processes improved over the years which enable the South African Revenue Service (SARS) to quickly and effectively process a taxpayer's submission to SARS. Furthermore, the Income Tax threshold (R59 750 for the 2012 year of assessment), for taxpayers younger than 65 years of age, is approaching the SITE limit of R60 000. To ease the impact on affected taxpayers (who now have to submit an Income Tax Return), a phasing-out process over the next two years of assessment has been introduced. Administrative relief measures are provided for to limit any potential hardship to affected taxpayers.¹³⁵

Taxpayers who received more than one IRP5/IT3(a), from which only SITE (source code 4101) has been deducted, will now be liable to pay Income Tax for the first time on their combined income.

¹³⁴The phasing out of standard income tax on employees (SITE). SARS

¹³⁵The phasing out of standard income tax on employees (SITE). SARS

The Income Tax payable will be at a reduced amount which will be calculated as follows:

- For the 2012 year of assessment you will pay the calculated SITE amount and one third (1/3) of the additional tax calculated
- For the 2013 year of assessment you will pay the calculated SITE amount and two thirds (2/3) of the additional tax calculated
- As of the 2014 year of assessment you will be liable for the full tax amount calculated.¹³⁶

2.3.3.3. **Pay As You Earn (PAYE)**

As mentioned above, Employees' Tax refers to the tax required to be deducted or withheld by an employer from remuneration paid or payable to an employee. The amounts so deducted or withheld must be paid by the employer to SARS on a monthly basis. The process of deducting or withholding tax from remuneration as it is earned by an employee is referred to as Pay-As-You-Earn (PAYE).

In terms of the Income Tax Act (No.58 of 1962), employers are required to:

1. Deduct the correct amount of tax from employees' remuneration.
2. Pay this amount to SARS monthly, ensuring SARS receives a Monthly Employer Declaration (EMP201).
3. Reconcile these deductions and payments with the completion of the interim and annual Employer Reconciliation Declarations.

During the reconciliation periods, employers are required to submit an Employer Reconciliation Declaration (EMP501) confirming or correcting the PAYE, SDL and UIF declarations per EMP201s submitted, the payments made and the tax values of the Employee Tax Certificates [IRP5/IT3(a)].

- a) The interim reconciliation is for the six-month transaction period 1 March to 31 August and must be submitted during September and October.
- b) The final annual reconciliation is for the full tax year 1 March to 28/29 February and must be submitted during April and May.¹³⁷

2.3.3.4. **EMP201**

SARS made changes to the EMP201 process in order to align with changes made to the reconciliation process. The EMP201 has been enhanced to show the allocation of the payments made, where the previously declaration was a payment and liability declaration. The EMP201 will now be the payment declaration in which the employer declares the total payment together with the allocations for Pay-As-You-Earn (PAYE), Skills Development Levy (SDL) and Unemployment Insurance Fund (UIF) respectively. Employers will no longer be required to complete both a payment liability and a payment declaration on an EMP201. The EMP201 is an employer payment declaration

¹³⁶ Ibid.

¹³⁷ PAYE for Employers. SARS Communication 2012

that requires employers to indicate the total payment made and give a breakdown of PAYE, SDL and UIF payment allocations. In the case of NIL declarations, a declaration must be made to SARS reflecting the nil amounts. This means that employers will only make one payment as opposed to three separate payments for PAYE, SDL and UIF. The EMP201 will therefore be used for a single period to declare how that payment must be allocated for each tax type.¹³⁸

Table 2.3 - Corporate tax rates

Rates of Normal Company Tax	
Companies and Close Corporations	28%
Branch and Agency Profits tax/personal service providers	33%, reduces to 28% with effect from years of assessment ending 1 April 2012
South African sourced income of foreign investment	33%, reduces to 28% with effect from years of assessment ending 1 April 2012
Small Business Corporations (for financial years ending during 1 April 2012-31 March 2013)	
• R0-R63 556 of taxable income	0
• R63 557-R350 000 of taxable income	7% of the amounts above R63 556
• R350 001 and above of taxable income	R20 051 + 28% of the amount above R350 000
• R0-R150 000 of taxable turnover	0
• R 150 001-R300 000 of taxable turnover	1% of the amount above R150 000
• R300 001-R500 000 of taxable turnover	R1 500+ 2% of the amount above R300 000
• R500 001-R750 000 of taxable turnover	R5 500 + 4% of the amount above R500 000
• R750 001 and above of taxable turnover	R15 500 + 6% of the amount above R 750 000

(Source: KPMG Tax Card 2012/2013)

13. VAT

Should a company's turnover be R300,000 a year or more, it is required by law to register as a VAT (Value Added Tax) vendor. This is done by completing and submitting a VAT101 form, which is available at any SARS office.

¹³⁸ A guide to the Monthly Employer Declaration (EMP201) process. SARS Communication 2012

Close Corporations must submit the following documentation with their VAT101 forms:

- The VAT127 Form, which must be accompanied by a business plan
- A copy of Form CK1
- Certified copies of the identity documents of the member or members
- A cancelled business cheque
- A copy of a letter issued by the company's accounting officer accepting his or her appointment
- A list of business contacts, if available

Persons who make taxable supplies in excess of R1 million in any consecutive 12-month period are liable for compulsory VAT registration, but a person may also choose to register voluntarily provided that the minimum threshold of R50 000 has been exceeded in the past 12-month period. Persons who are liable to register, and those who have registered voluntarily, are referred to as vendors. Any person who carries on an enterprise and whose total value of taxable supplies (taxable turnover) exceeds, or is likely to exceed, the compulsory VAT registration threshold, must register for VAT.

2.3.4. Environmental Considerations

South Africa has a progressive environmental regulatory framework. The right to an environment that is not harmful to one's health or well-being is entrenched as a fundamental right in the Constitution. The Constitution also provides that the Government must take reasonable legislative and other measures to -

- prevent pollution and ecological degradation;
- promote conservation;
- secure ecologically sustainable development; and
- use natural resources while promoting justifiable economic and social development.

It is also thought that this obligation applies to private entities as well, and not just between public and private entities.¹³⁹

Various environmental acts regulate the protection of biodiversity and direct the promotion of a sustainable healthy environment. The Act salient to most businesses is the South African National Environmental Management Act which governs most of the environmental aspects concerning legislation in South Africa. The Act includes sections on Air Quality, Biodiversity, waste management, protected areas and environmental impact assessment (EIA) regulations.

¹³⁹ *Doing Business in South Africa*. 2012. Edward Nathan Sonnenbergs

Some of the main aspects of environmental regulations concerning business are:

2.3.4.1. **Integrated Permitting System**

There is no integrated environmental permitting system in South Africa. It is the responsibility of the project developer to determine which environmental permits are necessary and to ensure that all such permits are obtained. A number of separate permits are often required from separate environmental authorities and from different levels of government.

2.3.4.2. **Water Permits**

Water use requires a license or other form of regulatory authorisation under the National Water Act. For the purposes of the National Water Act, 'water use' includes, amongst other things: taking water from a water resource; storing water; impeding or diverting the flow of water in a watercourse; disposing of waste in a manner that may detrimentally impact on a water resource; and altering the bed, banks, course or characteristics of a watercourse.¹⁴⁰

Permits for the use or pollution of water are issued by the Department of Water Affairs ("DWA"). Section 21 of the National Water Act lists the water uses for which a permit is required.

These include most activities that have an impact on a water resource such as -

- discharging waste or water containing waste into a water resource through a pipe, canal, sewer, sea outfall or other conduit;
- disposing of waste in a way which may detrimentally impact a water resource; and
- disposing of water containing waste from, or which has been heated in, an industrial or power generation process.

In addition, the DWA has developed a waste discharge charge system that is based on the principle that the polluter should pay for any pollution caused to a resource. Therefore pollution is allowed to a certain extent but must be permitted by the DWA. As well as being liable for the costs of remediation, anyone who commits an offence under the National Water Act is liable on first conviction to a fine or imprisonment for a period up to five years, or both. In the case of any subsequent conviction, the person is liable to a fine or imprisonment for a period up to ten years, or both. In addition, employers can be held vicariously liable for employees' acts if the offence has taken place with the express or implied permission of the employer or principal.¹⁴¹

¹⁴⁰ Overview of South Africa's Environmental Legislation. W. Beech, M. Diemont, G. Rapson & J. Kalima

¹⁴¹ Ibid.

2.3.4.3. *Environmental Impact Assessments*

NEMA provides that certain listed activities cannot be initiated unless an EIA or basic assessment (depending on the size and nature of the activity) is carried out and approval obtained from the relevant authority.

Projects with a moderate to large environmental impact are listed. These vary greatly, from the construction of a dam to energy generation projects. If the activity is a listed activity under EIA regulations, then a permit is required before the activity can begin. Other permits from authorities may also be required as there is no integrated permitting system.

2.3.4.4. *Heritage Resources*

The National Heritage Resources Act (No. 25 of 1999) provides for the protection and management of certain categories of heritage resources in South Africa. For the purposes of the Heritage Resources Act, a 'heritage resource' includes any place or object of cultural significance. The Act provides that certain activities relating to heritage resources require consents from relevant heritage resources authorities. For example, no person may alter or demolish any structure that is older than 60 years without a permit issued by the relevant provincial heritage resources authority.

2.3.4.5. *Hazardous Substances*

In South Africa, substances that may cause injury or ill-health by reason of their toxic, corrosive, irritant, strongly sensitising or flammable nature are largely controlled by the Hazardous Substances Act, No. 15 of 1973. In addition, the Hazardous Substances Act controls certain electronic products and provides for the prohibition and control of the importation, manufacture, sale, use, operation, application, modification, disposal or dumping of such substances and products.

2.3.4.6. *Pesticides and Fertilisers*

The use of pesticides and fertilisers is controlled in South Africa under the Fertilisers, Farm Feeds, Agricultural Remedies and Stock Remedies Act (No. 36 of 1947). The Department of Agriculture administers this Act. In terms of the Act, fertilisers, farm feeds, agricultural remedies, stock remedies, sterilising plants and pest control operators are to be registered. The importation, sale, acquisition, disposal and use of such remedies are regulated.¹⁴²

2.3.5. *Property rates and taxes*

Property taxes or rates are charges or levies to owners of property and these charges normally relate to the fact that the property is owned, occupied, or being developed. While an SME that owns property will be directly affected through actual payment of rates and transaction costs, those that rent properties are also affected. For example, the rent charged on a property is directly linked to the loan repayment on a property and the value of property rates. The property rate is determined

¹⁴²Overview of South Africa's Environmental Legislation. W. Beech, M. Diemont, G. Rapson & J. Kalima

by the type of property, i.e. residential, commercial, agricultural, multi-purpose (both residential and business use), etc. Other rates applicable are electricity and water which are administered by the relevant local municipality.¹⁴³

2.3.6. Town Planning

Whenever an aspiring business wants to start operation it is advisable to ensure the correct land use management is applied. Rights associated with the use of land allow businesses to operate legally. Zoning schemes are the regulatory framework indicating the permissible use rights for land according to zone. Depending on the zone, some business uses may operate as of right, other uses may be permitted with the consent of the municipality and certain uses would be prohibited and would entail a change in use rights or rezoning. Zoning schemes are the point of reference for municipalities regarding regulations and rates and this directly impacts on operation of businesses.

In addition to zoning some sector specific land policies exist, usually forming part of a municipality's land use management system (LUMS) and may have an impact on SMEs. These include policies relating to:

- Residential business (Home based industries/businesses)
- Guesthouses/accommodation facilities
- Taverns and shebeens
- Adult entertainment ¹⁴⁴

2.3.7. Business Licenses

It is no longer a mandatory requirement for a general business to obtain a license. There are a few exceptions. These entities are required by law to obtain a license to operate. They are based on the particular type of business activity.

These activities are:

- Sale or supply of meals or perishable foodstuffs
- Provision of certain types of health facilities
- Hawking in meals or perishable foodstuffs.

The local fire department is also involved in the licensing of a business as it has to ensure the premises is not a fire hazards and conforms to safety regulations. In some cases, the South African Police Service has to issue an application to the Liquor Board for businesses wishing to sell alcohol or where entertainment is a core part of the business.

¹⁴³ *Impact of Municipal Regulations on SMMEs: Development Policy Research Unit UCT. 2006.*

¹⁴⁴ *Ibid.*

2.4 The Registering of a Business

Government, through various policies and incentives, aims to stimulate and promote the establishment of SMEs. Small and Micro Enterprises in South Africa have an estimated total economic output of 50% of GDP. It is also estimated that SMEs provide employment to about 60% of the labour force. SMEs are therefore an important contributor to the economy and are considered a driver for reducing unemployment, given that the formal sector continues to shed jobs. It is therefore vital to encourage entrepreneurs to commence new business initiatives. Knowledge with regards to the correct statutory and regulatory procedures will ease the burden of business registration. In this section, the various procedures relating to starting and regulating a business is investigated.

2.4.1. Business Plan

A business plan is a document/plan of how a business owner, manager or entrepreneur intends to organise an entrepreneurial endeavour and implement activities necessary and sufficient for the venture to succeed. It is an essential tool for planning, direction and running a business. It clarifies the operational and financial objectives of a business and contains the detailed plans and budgets showing how the objectives are to be realised. A business plan can be used as a powerful sales document for raising money. A business plan is a prerequisite for engaging with a venture capitalist, and/or investors. To raise funds for a start-up business venture or to raise additional capital, a document must fulfil the requirements of a funding institution or sponsor and this will give the reader an insight into what the person will be doing in the proposed or existing business. The organisations that lend money to a business also want to get a return on their investment. They want a 'safe' investment with relatively low risk. A thorough business plan can accomplish this. The plan will assist an entrepreneur in what to do and when to do it. Entrepreneurs should use their business plan for the critical start up. Entrepreneurs should use their business plan for start-up of operations; or during expansion of operations to ensure that they stay on target and within the budget at all times. Prospective entrepreneurs involved in the process of formulating their own business plans from the onset, will be more objective and critical towards their business than if it is prepared by outside consultants or individuals.

2.4.1.1. *The basic elements of a business plan*

All sections of the business plan are interrelated, and cannot be written in isolation. Each should be written by people who are fully aware of the contents and intricacies of the other areas of the plan so that the different sections are all integrated. Although there is a fairly well accepted structure for a business plan, there are many ways of putting it down on paper. While most business plans will

have the basic contents listed below, no two plans have identical headings, flows and appendices. Some of the contents will have different names and be presented in a different order but almost any business plan will cover these broad areas:

a) Example I

- OVERVIEW / DESCRIPTION
 - o *Business definition (description)*
 - o *Mission statement*
 - o *Goals and Business Objectives*
 - o *Situation analysis*
 - o *External and internal trends*
 - o *Competition*
- SWOT
 - o *(Strengths, Weaknesses, Opportunities and Threats)*
 - o *Target Market*
- MARKETING PLAN
 - o *Positioning Statement*
 - o *Consumer Profile*
 - o *Product or Service*
 - o *Marketing Mix (product, price, promotion, place etc.)*
 - o *Packaging*
 - o *Placement or Distribution*
 - o *Promotion and Selling*
 - o *Price*
 - o *Partnerships*

- o *Programming*
 - o *Monitoring (Controls and Reviewing Performance)*
- OPERATIONAL PLAN
 - o *Managing People*
 - o *Managing Resources*
- FINANCIAL PLAN
 - o *Costing and pricing of goods and services*
 - o *Projected budgets and cash flow forecast*
 - o *Funding requirements*

(Source: Starting a Tourism Business: SATSA, 2005)

b) Example 2

1. Table of Contents
2. Executive Summary
3. General Company Description
4. The Opportunity, Industry & Market
5. Strategy
6. Business Model
7. Team – Management & Organisation
8. Marketing Plan
9. Operational Plan
10. Financial Plan
11. Appendix

(Source: Entrepreneur SA)

Executive Summary

The executive summary is probably the most critical part of the business plan. Many business plan readers will read the executive summary and then decide whether to proceed further or discard the plan. The executive summary should be written last, once all the other sections are complete. It should not exceed two pages and should eloquently summarise the most important aspects of the plan. This is a summary of the entire plan and should cover who, what, where, when, why, how and how much as follows:

- The company (who, what, where, when)
- The management and their strengths
- The business objectives and why it will be successful
- If the business needs financing, why you need it, how much you need and how you intend to repay the loan or benefit the investor

General Company Description (1 – 2 pages)

The general company description section is used to give a high level overview of the company and the business that it engages in. This introductory section of the plan section should include:

- Name of the company, type of legal entity, ownership, significant assets
- Mission statement of the business
- Company goals and objectives
- The main features of the industry in which you will operate
- The most important company strengths and core competencies

Opportunity, Industry and Market

This section of the business plan requires that the business owner communicate some of the insight that he/she obtained into the industry, the market and the opportunity from the systematic research conducted before writing the business plan.

Strategy (1-2 pages)

The strategy is a description relating how the business will compete in the chosen markets. This requires a description and explanation of the strategic choices that have been made as a business, including:

- The focus of the business: broad mass market or a specific niche?
- How the business will succeed in the market
- What is unique about the business? How is the offering different from that of competitors?
- What is the value for the customers? Describe the value proposition for the customer?

Business Model (1 page)

A business mode is the profit-making engine of the business. It is central to a business's success. The important aspects of a business model that should be presented in a consolidated framework include: The sources of revenue

- The major costs involved in generating the revenue
- The profitability of the business (revenue less costs)
- The investment required to get the business up and running (to get to scale)
- The critical success factors and assumptions for making the profit model work

Team – Management & Organisation (2 pages)

This section should provide a description of the people behind the business. It should include:

- A list the founders including their qualifications and experience
- A description of who will manage the business on a day-to-day basis, the experience these individuals bring to the business and special or distinctive competencies they offer.
- An organisational chart if the business has more than 10 employees, showing the management hierarchy and responsibility for key functions (including position descriptions for key employees)

Marketing Plan (2 – 3 pages)

The marketing plan defines all of the components of the marketing strategy. The marketing plan should draw on market research. It should disclose the important marketing decisions about:

- The product (or service) and why it is valuable to customers
- The focused and detailed description of the target market
- The positioning of the product or service – how it should be perceived by customers
- The pricing strategy with specific price points at which the product or service will be sold
- The sales and distribution channels that will be used to get the product or service to the customer
- The promotion strategy including public relations activities, specific promotions, advertising and intended viral marketing activities

Operational Plan (2 pages)

The operational plan explains the daily operation of the business, its location, equipment, people, processes and surrounding environment. This section will vary depending on the nature of the business but some the more generic items that can be presented include:

- A description of the operating cycle that describes what the organisation will do to deliver its service or create and sell its product

- A description of where all the necessary skills and materials will be sourced
- What will be outsourced, what relationships are in place and how those relationships will be managed
- The cash receipts and cash payment cycle of the business

Financial Plan (3 – 5 pages)

The financial plan is a reasonable estimate of the company's financial future. Included are a few paragraphs on the main features in the financial plan, backed up with financial projections. The following are the most important financial documents to include in the financial plan:

- Start-up expenses and capitalisation: a description and explanation of what it will cost to launch the business and where funding will be obtained from
- 12-month profit and loss projection (month-by-month) and a three-year profit and loss projection (quarter-by-quarter)
- A 12-month cash-flow projection and a three-year cash-flow projection (quarter-by-quarter)
- A projected balance sheet at start-up and at the end of years one to three
- A break-even calculation

Appendix

The appendix includes additional documents that the reader of the business plan may want to refer to. Documents that could be included in the appendix:

- Brochures and advertising materials
- Industry studies
- Blueprints and plans
- Maps and photos of location
- Magazine or other articles
- Detailed lists of equipment owned or to be purchased
- Copies of leases and contracts
- Letters of support from future customers
- Any other materials needed to support the assumptions in this plan
- Market research studies
- List of assets available as collateral for a loan
- Detailed financial calculations and projections¹⁴⁵

¹⁴⁵Entrepreneur SA

2.4.1.2. *Estimated time for a business plan completion*

To do a good Business Plan takes anything from 6 weeks to 6 months depending on how much research is required as well as how much time one has to actually put it together. A business owner should estimate 120 hours minimum required to complete a well-researched and presented Business Plan. One has to weigh up the long term cost of rushing it and perhaps missing a good opportunity that is, or a "fatal flaw" which is a factor or series of factors that could destroy the business.¹⁴⁶

2.4.1.3. *Estimated cost of a business plan*

Generally, it is better to use a professional who has experience in this area of expertise. A well prepared professional Business Plan can cost anything from R15 000 up to R40 000 depending on what is involved. It is not possible to give an overall price for Business Plans as a true professional has to investigate what the plan involves first before giving a price. It must be noted however that the Business Plan should be done as a joint effort with the business owner. Business owners can write their own business plans with the assistance of various organisations such as SEDA or the Mangaung Chamber of Commerce and Industry's SME Support Centre. Alternatively, courses in writing business plans are available and generally cost R 5000 per course.¹⁴⁷

2.4.1.4. *Common mistakes in the drafting of business plans*

a) Cash flow

Most prospective entrepreneurs focus mainly on the infrastructure that is required and ignore the cash flow which is critical to the daily operations of the business. Cash flow assists in managing financial resources, i.e. debtors and creditors control.

b) A vague business plan

Prospective entrepreneurs or writers of business plans make an assumption that the reader/funding institution/investor knows what the business venture is all about. Therefore, it is important to provide as much detail as possible and elaborate wherever necessary to clarify the needs of the business.

c) Unrealistic assumptions

Almost all writers of business plans assume that the business will succeed, hence they make unrealistic assumptions. It is advisable to benchmark against existing or similar businesses in the industry for acceptable standards. The goals of the business must be realistic and achievable.

¹⁴⁶Venture Capitalists

¹⁴⁷Venture Capitalists

d) Risks

Many business plans ignore the risks or do not make provision for the risks. It is critical that the business plan should include all risks and provide information on how some of those risks can be mitigated.

e) Competition

Many prospective entrepreneurs ignore incorporating information on competitors, either through their lack of knowledge of them or they are not aware of the significance of competitors to their business. It is, therefore, imperative, as a new or existing business, that the business owner is aware of the competition and that he/she accentuates his/her competitive advantages in the business plan.

f) Suppliers

Suppliers play a critical role in a business. It is important to know who and where the suppliers are as they contribute to the effective and efficient running of a business. Inconsistent and lack of the necessary inputs from suppliers will impact negatively on production and could result in non-delivery of products to the market. Hence building and strengthening relationships with suppliers contributes to the long term sustainability of a business.¹⁴⁸

2.4.2. Company Registration

2.4.2.1. Category of Company

Once an individual has decided on the type of business start-up, consideration must be given to the form the venture will take. South African legislation provides for various forms of companies. These are:

1. Sole Proprietor
 2. Private Company – (PTY) Ltd
 3. Personal Liability Company – Inc.
 4. Public Companies (Ltd.)
 5. State Owned Companies – SOC
- **Sole Proprietor:** the simplest of business entities, a sole proprietor trades under his/her own name, with no separation of assets and liabilities. For example, Joe Soap, an accountant, trades as Joe Soap Accountants. There being no separation between Joe Soap's personal assets and liabilities and those of his business, Joe Soap Accountants, he benefits from all the profits and assets accumulated through his business. However, he is also held personally

¹⁴⁸ *Agricultural Business Plan Guidelines*. 2011. Directorate Co-operative and Enterprise Development, Department of Agriculture, Forestry And Fisheries

liable for any debts that the business incurs. In other words, his sole proprietorship does not enjoy limited liability.

Unlike sole proprietorships, the following business entities are distinct juristic persons, with a separation being made between the assets and liabilities of the owners/shareholders, and those of the company. In other words, they do enjoy limited liability.

- **Private Company, or (Pty) Ltd:** this business entity may be founded and managed by just one director (known as a **One-Man Company**), and must have at least one shareholder, but no more than 50. (For example, Soap Accounting Services (Pty) Ltd.)
- **Personal Liability Companies (Inc.):** are business entities in which both current and previous directors may be held jointly and severally liable for any debts and liabilities which occur during their time in office. This form of business enterprise is most often used for firms of professionals, such as doctors, lawyers and accountants. (For example, Joe Soap's accounting firm, Soap, Smit and Sithole, Inc.)
- **Public Companies (Ltd.):** are business entities which issue shares, and are often listed on a stock exchange. Public companies are liable to shareholders and management is invested in a Board of Directors.
- **State Owned Companies (SOC):** are business entities which are either state-owned, like Metrorail, or owned by a municipality, like eThekweni Electricity.

While sole proprietorships are not required by law to be registered, private companies, personal liability companies, public companies and state owned companies need to be registered with the Companies and Intellectual Properties Commission (CIPC).

In the past, **close corporations** provided small businesses with a cost-effective and simple business entity under which to trade. But, as from May 2011, no new close corporations are being registered by the CIPC.¹⁴⁹

¹⁴⁹Businessowl. 2011

Other forms of business types are:

- **Co-operatives:** A Co-operative is an autonomous association of persons united voluntarily to meet their common economic, social, and cultural needs and aspirations through a jointly-owned and democratically controlled enterprise. In terms of a small business venture, the type of Co-operative will be a worker co-op. The key defining feature of worker co-ops is that worker-members in the co-op own and control it, on the basis of 'one member one vote'. In this way, worker co-ops potentially provide a radical alternative to the employment relationship found in conventional enterprises; and many of the difficulties they face relate precisely to this attempt to redraw the relationships between 'owners' and 'producers' – when co-op members combine both roles. ¹⁵⁰

As a Co-operative is a collective venture, before registering a Co-operative, a formation meeting must to be held with all persons that are interested in establishing the Co-operative.

- o The Chairperson outlines the aims and objectives of the proposed Co-operative
- o The Chairperson answers all the arising questions
- o The Chairperson invites everyone to join
- o Those interested should be given an application form for Membership to complete
- o The persons that have completed the above-mentioned application form decide how many persons will be required to manage the Co-operative
- o The members will then elect the board of directors (the board of directors will be the management or steering committee of the Co-operative)

Discussions should also be held regarding:

- o The Objectives (exactly what the Co-operative will do)
- o The equipment, premises and other materials needed by the enterprise
- o Where will the premises (Co-operative office) be located
- o Financing and obtaining funds
- o Draw-up an initial business plan
- o Choose a name for the Co-operative (and alternative names in case the first name is already registered by another enterprise). See notes under C for more information in this regard.
- o Complete and lodge the necessary application documents
- o Register as a CIPC customer by creating a customer code and pay the required fees

¹⁵⁰Co-operatives in South Africa: Their Role in Job Creation and Poverty Reduction. 2003. K. Philip. South Africa Foundation

- **Franchises:** A franchise is a business that involves the granting of a license by a franchisor to another party (the franchisee), which entitles the franchisee to trade under the established trade name. Some of the advantages of buying a franchised business are:
 - o Buying an entire business concept that has been researched thoroughly thereby minimising your risk.
 - o Buying into an established brand name. Brand equity in a business is the most difficult thing to create.
 - o Induction and training in all aspects of running the business.
 - o Trading in a business where operational efficiency already exists due to tried and tested methods by franchisors. This prevents a business owner from incurring costly mistakes in an attempt to achieve operational efficiency.
 - o The franchisor will provide the business owner with the necessary skills and technology to run the business.
 - o The cost of supplies is normally lower as the franchisee receives discounts normally only offered to larger businesses because he/she is buying under the franchise name.¹⁵¹

2.4.2.2. *Registration with CIPC*

a) Naming a company

The new Companies Act of 2008, just like the previous Act provides for name reservations. If a proposed name is rejected, the company may still be registered and the registration number then becomes the name of the company at incorporation, until such time as appropriate name has been reserved/approved. In addition, the Act proposes reforming the criteria for acceptance in such a manner that it seeks to give maximum effect to the constitutional right to freedom of expression.

i. Reservation Process

- o Complete form CoR 9.1 to reserve a name.
- o A company may indicate up to four alternatives which will be considered for reservation in the listed order. Only one name will be registered.
- o A company must indicate whether any word , number or other element constitutes a registered trade mark, mark or well-known trade mark
- o A company must provide supporting documents for associated name
- o The applicant of a name reservation must be an applicant for a new company registration

¹⁵¹Business Management Guide. 2004 Nedbank

The Act restricts a company name only as far as necessary to:

- o Protect the public from misleading names which falsely imply an associate that does not exist;
- o Protect the interest of the owners of names and other forms of intellectual property (such as trade marks) from other persons passing themselves off, or coat-tailing, on the owner's reputation and good standing; and
- o Protect the society as a whole from names that would fall within the ambit of expression that does not enjoy constitutional protection because of its harmful or other negative nature.
- o The applicant for the name reservation must be the person submitting the new company registration documents.
- o A name reservation is now valid for 6 (six) months.
- o The Companies Act, 2008 does not make provision for the registration of a shortened or translated name.
- o The formal implementation of usage of symbols and special characters will be publicised in due course.
- o All languages are accepted, but a name reservation in a foreign language must be accompanied by a certified translation and certificate of translation.
- o Names are allowed to be transferred from an applicant to another person by completing form CoR 11.1.
- o In terms of associated names, the Commission will forthwith require proof from the associated company that a similar name is to be allowed.

ii. Costs

A filing fee of R75 is payable if the request for name reservation is submitted manually and R50 if filed electronically. Reserved names may be extended for sixty (60) business days by completing form CoR 9.2 with a cost of R50 for the manual extension and R50 for extending the reserved name electronically.

iii. Estimated time

The estimated time for a company name reservation is within 3 days upon receiving the request.

b) Registering a Company

i. A company is incorporated by the lodging of the following main forms:

- o Notice of Incorporation (CoR 14.1)
- o Memorandum of Incorporation (MOI) (CoR 15.1 A-E)

ii. Memorandum of Incorporation (MOI)

The most important document governing a company is the MOI, which is a consolidation of the current Memorandum and Articles of Association of a company. The Act imposes certain specific requirements on the content of a Memorandum of Incorporation, as necessary to protect the interests of shareholders in the company, and provides for a number of default company rules / alterable provisions, which companies may accept or alter as they wish as long as it aligns with the Companies Act.

iii. The Memorandum of Incorporation CoR 15.1A-E (whichever is applicable) contains the following information:

- o Detail of Incorporators
- o Number of directors and alternate directors
- o Share capital (maximum issued)
- o Content of MOI

iv. The Notice of Incorporation (CoR 14.1), which must be lodged together with CoR 15.1 contains the following information:

- o Type of company
- o Incorporation date
- o Financial year end
- o Registered address (main office)
- o Number of directors
- o Company name
 - Whether company name will be the registration number;
 - The reserved name and reservation number;
 - List of 4 (four) names to be checked by the Commission.

v. Costs:

The basic filing fee for both the MOI and NOI is R175.00 each.

vi. Estimated time frame

The estimated time for completion of registration is 25 working days from receipt of the request.

c) Registering a Co-operative

- i. To reserve a name for the Co-operative, complete form CR5. Name reservation is not compulsory, but preferable. To register a Co-operative, submit the following to CIPC:
 - o Form CR1
 - o Either form CR4 (appointment of auditor) OR form CR8 (Exemption of certain auditing requirements for a given period).
 - o Certified copies of IDs of all members of Co-operative
 - o Two copies of the model constitution
- ii. To apply for registration the following documents must be lodged with CIPC:
 - o Certified copies of Identity Documents of all members.
 - o A Model Constitution. Two copies must be submitted. One copy may be a photocopy of the original. It is very important that the parts that are completed by hand are written neatly and legibly. The last page of the constitution must be signed by all the founder members of the Co-operative.
 - o A form CR1 (Application Form);
 - o Either a form CR4 (Appointment of Auditor) OR a form CR8 (Exemption Of Certain Auditing Requirements for a Given Period).
 - o A CR4 form, Part I, Section A (Appointment of Auditor)

This form must be completed by the Auditor (i.e. a Chartered Accountant). When completing the Auditor's details, his/her details must be identical to the details registered at the professional body. Information provided will be verified with the applicable professional body.

Alternatively, a CR8 form (Exemption of Certain Auditing Requirements for a Given Period) may be used. When a Co-operative cannot afford to use the services of an Auditor annually, it must complete a CR8 form and must choose one of the three options under part 2 of the form. The CR8 form is in the format of an affidavit, which must be provided by the Chairperson of the Co-operative and must be signed by a Commissioner of Oaths.

iii. Cost

The fee to register a Co-operative with CIPC is R 215.00.

iv. Estimated time frame

The estimated time for completion of registration is six weeks from receipt of application.

d) Regulations pertaining to Franchising

A franchise, in principle, is an independent business like any other business which must comply with a number of statutes applicable to its legal persona and specific industry, the same as any company. On 1 April 2011 new Regulations were published in terms of the Consumer Protection Act which relate specifically to franchises. All franchises must comply with these regulations by 30 September 2011 to avoid complaints and possible penalties. A Franchisee is an independent business which pays to be authorised to copy a successful Franchisor business and trade under the same name.

The nature of the legal relationship between Franchisor and Franchisee basically comes down to the licensing of the intellectual property of a franchisor business to Franchisees. There are of course also commercial and practical aspects which contribute to the legal relationship between the Franchisor and Franchisees. In this regard, there are commercial rights and obligations which must be agreed on. These commercial aspects include what franchise fee and royalties will apply, whether there will be a renewal procedure, as well as increases and a possible marketing contribution. However, a franchise cannot exist without an intellectual property license component.

The most important forms of intellectual property which are licensed in a franchise, relates to the know-how of the manner in which a business is conducted and the trade marks which are used in association with the franchisor business. The purpose of a trade mark is to identify a business or products. It is the trade marks which assist the public to associate Franchisees with the Franchisor business. It is not possible to have a successful franchise without licensing the use of trade marks.

Before offering or selling a franchise, it is recommended that a quick due diligence be conducted on the intellectual property to be licensed. The franchise fee is usually calculated based on the value of the intellectual property (including reputation) associated with a Franchisor business. It is therefore sensible to instruct an independent attorney to review the franchise agreement and at least the trade mark portfolio of the Franchisor.

In the event that a Franchisor has not applied or acquired registration of its pertinent trademarks as yet, and the franchise has not been trading for a number of years without any conflicts, there may be risks that the trade marks associated with the franchise may be vulnerable to conflicts by third parties.

Franchise agreements should generally comply with general contract law principles and some relevant statutes, such as the new Consumer Protection Act and others. Franchisees should

generally be allowed a reasonable time to review the franchise agreement and consult with an independent attorney to ensure all aspects in the agreement are clear, reasonable and legal.¹⁵²

There are basically two types of fees involved in paying a franchise, which are upfront fees and ongoing fees. The first is the initial upfront fee, which is payable the franchisor for the rights to open a franchise. Essentially, the individual is purchasing the rights to use the franchisor's trademarks, business methods, and distribution rights. This licensing charge can be significant, especially for a well-known, established franchise and may be tens of thousands of Rands. Often, it is also based on the value of the territory or trading area, therefore, the larger the market, the higher the value of the franchise.

The upfront fee may be in addition to any other start-up costs incurred by the business owner. The initial franchise fee may or may not include items such as training costs; start-up promotional fees; inventory; build-outs, etc. The new franchise owner will also have to pay ongoing fees to maintain the rights to the franchise. Most franchisors charge a royalty fee, typically a percent of gross sales, not profits. This royalty fee can range from 1 percent to as much as 15 percent, although 5 percent is typical. Some franchisors charge a regular fee (payable weekly, monthly or quarterly) in lieu of royalty payments. This type of fee may also be part of the mark-up charged for goods or services the new franchise owner is required to purchase. It is also customary for franchises to pay a portion of the franchisor's local, regional and national advertising and promotional costs.¹⁵³

2.4.3. Applying for Tax Registration

Referring to 2.3.2.3, where an employer pays or becomes liable to pay remuneration to an employee, the employer has an obligation to deduct Employees' Tax from the remuneration and pay the tax deducted to SARS on a monthly basis. In most instances, the employer is obliged to issue each employee with an Employees' Tax certificate [IRP5/IT3(a)] which reflects, amongst other detail, the Employees' Tax deducted. An employer must apply for registration for employees' tax purposes with SARS within 14 days after he / she becomes an employer unless none of the employees are liable for normal tax.¹⁵⁴

2.4.3.1. Standard Income Tax on Employees

March 2011 saw the start of the phasing out of Standard Income Tax on Employees (SITE). SITE taxpayers who received more than one Employee Income Tax certificate [IRP5/IT3(a)] resulting in a combined income of more than the tax threshold for that tax year – please refer to section 3 – will now be required to submit an Income Tax return (ITR12) as of the 2012 year of assessment

¹⁵²Franchising. 2012. De Kock Attorneys

¹⁵³Franchising Basics. SME Toolkit

¹⁵⁴Guide For Employers In Respect Of Employees' Tax (2012 Tax Year): Legal and Policy Division of SARS. 2011

onwards. Tax returns must be submitted during the Personal Income Tax (PIT) Filing Season which commences 1 July each year. SITE is a component of the Pay-As-You-Earn (PAYE) method of paying Income Tax and is a final withholding tax on the first R60 000 of your net remuneration deducted by an employer.¹⁵⁵

Net remuneration is any amount of income paid or payable to a person, for example:

- Salary (which will appear as source code 3601 on the Employee Income Tax certificate [IRP5/IT3(a)])
- Pension (source code 3603)
- Bonus (source code 3605) etc.

Less allowable deductions, for example:

- Pension fund contributions (source code 4001/4002)
- Retirement annuity fund contributions (source code 4006/4007)
- Medical expenses (source code 4005)
- Income protection policy contributions (source code 4018)

All taxpayers whose net remuneration or annual equivalent did not exceed R60 000 were subject to SITE only and, therefore, were not required to submit an Income Tax Return (ITR12).

The SITE system is now being phased out because the tax collection system has been modernised and administrative processes improved over the years which enable the South African Revenue Service (SARS) to quickly and effectively process a taxpayer's submission to SARS. Furthermore, the Income Tax threshold (R59 750 for the 2012 year of assessment), for taxpayers younger than 65 years of age, is approaching the SITE limit of R60 000. To ease the impact on affected taxpayers (who now have to submit an Income Tax Return), a phasing out process over the next two years of assessment has been introduced. Administrative relief measures are provided for to limit any potential hardship to affected taxpayers.¹⁵⁶

Taxpayers who received more than one IRP5/IT3(a), from which only SITE (source code 4101) has been deducted, will now be liable to pay Income Tax for the first time on their combined income.

The Income Tax payable will be at a reduced amount which will be calculated as follows:

- For the 2012 year of assessment you will pay the calculated SITE amount and one third (1/3) of the additional tax calculated

¹⁵⁵The phasing out of standard income tax on employees (SITE). SARS

¹⁵⁶Ibid.

- For the 2013 year of assessment you will pay the calculated SITE amount and two thirds (2/3) of the additional tax calculated
- As of the 2014 year of assessment you will be liable for the full tax amount calculated.¹⁵⁷

2.4.3.2. Pay As You Earn (PAYE)

As mentioned above, Employees' Tax refers to the tax required to be deducted or withheld by an employer from remuneration paid or payable to an employee. The amounts so deducted or withheld must be paid by the employer to SARS on a monthly basis. The process of deducting or withholding tax from remuneration as it is earned by an employee is referred to as Pay-As-You-Earn (PAYE).

In terms of the Income Tax Act No.58 of 1962, employers are required to:

1. Deduct the correct amount of tax from employees' remuneration.
2. Pay this amount to SARS monthly, ensuring SARS receives a Monthly Employer Declaration (EMP201).
3. Reconcile these deductions and payments with the completion of the interim and annual Employer Reconciliation Declarations.

During the reconciliation periods, employers are required to submit an Employer Reconciliation Declaration (EMP501) confirming or correcting the PAYE, SDL and UIF declarations per EMP201s submitted, the payments made and the tax values of the Employee Tax Certificates [IRP5/IT3(a)].

- The interim reconciliation is for the six-month transaction period 1 March to 31 August and must be submitted during September and October.
- The final annual reconciliation is for the full tax year 1 March to 28/29 February and must be submitted during April and May.¹⁵⁸

2.4.3.3. EMP201

SARS made changes to the EMP201 process in order to align with changes made to the reconciliation process. The EMP201 has been enhanced to show the allocation of the payments made, where the previously declaration was a payment and liability declaration. The EMP201 will now be the payment declaration in which the employer declares the total payment together with the allocations for Pay-As-You-Earn (PAYE), Skills Development Levy (SDL) and Unemployment Insurance Fund (UIF) respectively.

Employers will no longer be required to complete both a payment liability and a payment declaration on an EMP201. The EMP201 is an employer payment declaration that requires employers to indicate the total payment made and give a breakdown of PAYE, SDL and UIF payment allocations. In the

¹⁵⁷ The phasing out of standard income tax on employees (SITE). SARS

¹⁵⁸ PAYE for Employers. SARS Communication 2012

case of NIL declarations, a declaration must be made to SARS reflecting the nil amounts. This means that employers will only make one payment as opposed to three separate payments for PAYE, SDL and UIF. The EMP201 will therefore be used for a single period to declare how that payment must be allocated for each tax type.¹⁵⁹

2.4.3.4. The Registration Process

a) Employee Tax

Application to register as an employer must be made on an EMP101e form. Where an employer has for registration purposes applied for separate registration of branches of his/her undertaking, each such branch shall be deemed to be a separate employer. Application to register a branch separately from the main branch must be made on a separate form. Every employer must keep a record of all remuneration paid, Employees' Tax deducted in respect of each employee and SDL and UIF contributions. This register must contain personal particulars as well as financial details of each employee. These records must be maintained in such form, including any electronic form, as may be prescribed by the Commissioner.

- i. The following record of all employees' needs to be maintained by the employer, as may be prescribed by the Commissioner.
 - o Amount of remuneration paid
 - o Employees' Tax deducted/withheld on all remuneration
 - o Income Tax reference number (if any)

- ii. Prescribed period for keeping records

The records must be kept for a period of five years from the date of the last entry and must be available for inspection purposes by SARS officials.

- iii. Employee Particulars

The employee must supply the following particulars to his/her employer to ensure that the employer's records are correct:

- Surname and full names
- Address
- Identity number or passport number and date of birth
- Income Tax reference number (if any)
- Written declaration where required in cases where:

¹⁵⁹ A guide to the Monthly Employer Declaration (EMP201) process. SARS Communication 2012

- o An employee is deemed to be in standard employment
- o Where such employee renders services to the employer for 22 hours or less in every completed week
- o The employee furnishes the employer with a written declaration stating that he/she does not or will not render services to another employer during the period he/she hold such employment at the relevant employer.

iv. Income tax reference number System

SARS has provided employers with the ability to verify Income Tax reference numbers of their employees and to register them for Income Tax with SARS. This process is only applicable to employees with a nature of a person indicated by a Letter and identified as:

- A - individual with identity or passport number
- C – director of a private company/member of cc
- N – Pensioner.

Employers are now able to submit registration for a single employee or for multiple employees via the e@syFile™ Employer software application. The employer is able to view details of all employees who are not registered for Income Tax through this application. The employer can select from the list of unregistered employees, those he/she wants to register. The employer can select only one employee or more than one employee.¹⁶⁰

b) Turnover Tax

Turnover tax is a simple presumptive tax that is calculated for a year of assessment by applying a tax rate to the turnover of a business. A year of assessment runs from the first day of March to the last day of February of the following year. Deductions are not taken into account, which means that it is not necessary to determine which expenses are tax-deductible and how to claim them. Detailed recordkeeping is also not necessary for turnover tax unlike in the standard tax system. To compensate for not taking deductions into account, the turnover tax rates are far lower than the tax rates used in the standard tax system (see Turnover Tax Rate Table below). Based on the progressive turnover tax rates, some businesses will not be liable for turnover tax. In addition, the taxable turnover of a qualifying business is ring-fenced from other taxable income e.g. a tax assessment for a year of assessment will not combine the employment income of a person with the taxable turnover from a flea market stall that he or she runs on the weekend - these income streams will be assessed separately, which effectively means less tax payable than on the combined income.

¹⁶⁰ Guide For Registration Of Employees By Employers For Income Tax Purposes. SARS

Turnover tax is available to individuals (sole proprietors), partnerships, close corporations, companies and Co-operatives and it is elective (i.e. qualifying small businesses can choose to register for the standard tax system or for turnover tax). A typical business within the standard tax system may have to account for the following taxes to SARS:

- Value-Added Tax (VAT),
- Income Tax,
- Provisional Tax,
- Capital Gains Tax (CGT) and
- Secondary Tax on Companies (STC).

The simplified tax system replaces all of these taxes with a simple turnover tax for small businesses that meet certain requirements. The requirements are:

- The 'qualifying turnover' of the business must be less than or equal to R1 million for the 'year of assessment'.
- The business must have a financial year that ends on the last day of February.
- The business must not have been registered for turnover tax for any of the last three years of assessment.
- The income from 'professional services' of the business should not exceed 20% of the total income of the business for the year of assessment.
- The income from the disposal of assets by the business over the year of assessment and the past two years of assessment is not expected to exceed R1.5 million in total.
- The business may not be a 'public benefit organisation' or a 'recreational club'.
- The business may not be a 'labour broker' without a SARS exemption certificate.
- If the business is a partnership, all the partners must be individuals throughout the year of assessment.
- The owner or any partner does not hold shares/interests in a close corporation, company, or cooperative other than the following exceptions:
 - o Interests in listed South African companies;
 - o Interests in collective investment schemes;
 - o Interests in body corporates and share block companies;
 - o Interests in venture capital companies;
 - o Interests of less than 5% in social or consumer Co-operatives;
 - o Interests of less than 5% in cooperative burial societies or primary savings co-operative banks;
 - o Interests in friendly societies;

- o Interests in a company that did not trade during any year of assessment and which did not own assets with a total market value that exceeds R5 000 during any year of assessment;
- o Interests in any company that has taken steps to liquidate, wind up or deregister

Should a company opt to register for turnover tax, it must complete the TT01 application form and the completed form must be submitted to the nearest SARS office.

c) UIF registration

In terms of Section 10 of the UIC Act where an employer is liable to pay contributions, the employer must register with SARS or the UIF office (whichever is applicable to such employer) for the payment of the contributions.

i. Registration at UI Commissioner's Office

To register at UI Commissioner's office (not SARS), the following employers must register at the UI Commissioner for purposes of paying UIF contributions:

- An employer who is not required to register for Employees' Tax purposes at SARS
- An employer who has not registered voluntarily as an employer for Employees' Tax purposes at SARS
- An employer who is not liable for the payment of Skills Development Levy (SDL).

ii. Registration with SARS

Any employer who is liable to register with SARS for the payment of Employees' Tax and/or SDL or has voluntarily registered with SARS for Employees' Tax purposes is also required to register with SARS for purposes of paying UIF contributions. Application for registration for UIF purposes is made per EMP101e (Application for Registration as in a) above). It should be noted that an employer does not have any discretion as to whether to register with either the UI Commissioner or SARS. The liability of the employer to register and pay Employees' Tax and/or SDL will determine with whom an employer must be registered for UIF purposes.

Should the employer be registered with SARS for UIF only and there is no prospect of becoming liable for Pay-As-You-Earn (PAYE) and/or SDL in the near future, the employer should deregister with SARS and register with UIF Commissioner. The employer can still submit only a UIF reconciliation using his/her PAYE number for e@syFile™ Employer registration. The PAYE number is the same as the UIF number allocated by SARS except that the first digit is a "U" and not a "7". The registration will be processed and the employer will be able to use e@syFile™ Employer to

reconcile and submit the UIF reconciliation via e-Filing. The monthly PAYE liability must be declared as “0” and the actual monthly UIF liability must be completed in a monthly liability column. The monthly UIF payments in respect of UIF contributions (excluding penalty and interest payments) must be completed in the payments column.¹⁶¹

d) SDL Registration

Section 5 of the SDL Act prescribes that where an employer is liable to pay the levy, the employer must register per EMP101 (Application for Registration) as an employer with SARS in the area in which the business is situated and must indicate the jurisdiction of the SETA within which the employer must be classified as well as the applicable SIC code.

In order to ensure that the application for registration for SDL is processed, the valid classification SETA/SIC codes must be completed. All employers who do not choose a SETA cannot claim their grants as they do not belong to a SETA. They are automatically allocated to SETA 0.¹⁶²

e) VAT Registration

Should a company's turnover be R300,000 a year or more, it is required by law to register as a VAT (Value Added Tax) vendor. This is done by completing and submitting a VAT101 form, which is available at any SARS office.

Close Corporations must submit the following documentation with their VAT101 forms:

- The VAT127 Form, which must be accompanied by a business plan
- A copy of Form CK1
- Certified copies of the identity documents of the member or members
- A cancelled business cheque
- A copy of a letter issued by the company's accounting officer accepting his or her appointment
- A list of business contacts, if available

The VAT 101 application for registration must be submitted in person at the SARS branch office nearest to the place where the business is situated or carried on. This means that in the case of a sole proprietor the individual concerned must submit the application in person, or in the case of any other person such as a partnership, company or trust, the relevant representative vendor must submit the application in person. Alternatively, a registered tax practitioner may appear in person on

¹⁶¹ Guide For Employers In Respect Of UIF: SARS

¹⁶² Guide For Employers In Respect Of SDL: SARS

behalf of the applicant. Where there are several enterprises/branches/divisions which will operate under one VAT registration number, the business should register in the area where the main enterprise/branch/division is located.¹⁶³

Requirements

SARS will not accept any faxed or photocopied applications for registration. One should also ensure that where a certified copy of a specific document is required (for example an ID document), that the actual certified true copy of the original is submitted with the registration application, and not merely a photocopy thereof. Posted applications will only be processed if applicants are geographically far from the branch office or due to any form of disability and the applicant cannot physically present the application.

The application for registration form consists of the following parts:

- Particulars of person applying / liable for registration;
- Particulars of enterprise;
- Particulars of other enterprises / branches / divisions;
- Financial particulars;
- Particulars of 2 most senior partners / members / directors / shareholders / trustees;
- Particulars of representative vendor;
- Particulars of external auditor / bookkeeper / accountant / tax practitioner (Where applicable);
- Banking particulars;
- Attachments required of person applying for registration;
- Declaration by representative vendor;
- Notes.

Individuals who apply for VAT are classified in a number of categories (a-i), according to the nature of the business, ranging from an individual to a trust. Each category is required to provide supporting documents. In general, all are required to provide the documents listed below, but some categories are required to provide additional information.

It is best to check with SARS into which category the business falls first to ensure the correct documentation is supplied, but in general, the required documents are:¹⁶⁴

- Copy of ID document of the individual;

¹⁶³VAT404: VAT Guide for Vendors. SARS

¹⁶⁴VAT404: VAT Guide for Vendors. SARS

- Original cancelled cheque or original letter from banker;
 - Copies of:
 - o the latest three (3) bank statements (only where the statements for at least three months can be provided); or
 - o financial information listed in part 4 of the application form (only where less than three months bank statements are available or where no bank statements are available);
 - In case of a practitioner, a letter of Authority / Power of Attorney to authorise the practitioner to act on behalf of the vendor; and
 - Copy of the business municipal account and copy of the residential municipal account of individual, partner or representative vendor;
- o In case of a married individual the municipality account in the name of the spouse may be accepted.
- o If the property is leased, a copy of the lease agreement.

Once the business has been registered, it will receive a VAT registration certificate (VAT 103). SARS employees are not allowed to advise a business verbally of its VAT registration number. If a business has not yet received its certificate and require some proof of registration, it can request the local SARS office to provide a letter confirming this fact (VAT 103i form). The certificate will be posted to the postal address given on the registration application and should be received within two weeks of the application being processed.¹⁶⁵

It is worth noting that Turnover Tax was initially introduced as a simplified tax system for micro businesses as an alternative to the current income tax and VAT systems. Micro businesses that made taxable supplies in excess of the minimum threshold of R50 000 in a 12-month period (or R60 000 in the case of suppliers of “commercial accommodation”) were previously not allowed to register voluntarily for VAT if registered for Turnover Tax. However, with effect from 1 March 2012 a qualifying micro business that is registered for Turnover Tax may also choose to register for VAT provided that all the conditions for voluntarily registration are met.¹⁶⁶

f) Estimated time frame and cost

There are no costs involved when registering for tax, unless done through an intermediary such as a lawyer or registration entity. Registration companies usually charge from R250 to R400 per

¹⁶⁵Ibid.

¹⁶⁶VAT404: VAT Guide for Vendors. SARS

registration. The estimated time frame for registration of any tax is approximately 12-21 days. VAT registration usually takes longer and as the original certificate is posted, may take up to 21 days.

2.4.4. Opening a Business Bank Account

In order to open a bank account, the applicant needs to have a proof of who the directors are, and the original company documents. This procedure might take longer if required documentation is not in order.

The bank must be presented with original company documentation. In general, the following information is required

- *Proprietorship*: identity document; two trade references; tax number; three month's bank statements if switching accounts
- *CC*: founding statement; Certificate of Incorporation; identity documents of each member; two trade references; three months' bank statements if switching accounts
- *PTY (Ltd)*: Memorandum of Incorporation; Certificate of Incorporation; identity documents of shareholders/directors; three months' bank statements if switching accounts.

2.4.4.1. FICA

Banks are obligated to comply with the Financial Intelligence Centre Act No. 38 of 2001 (FICA), legislation which aims to combat money laundering. These are prerequisites for opening any bank account in South Africa and the following must be presented to the banker:

- Proof of identity –green South African identity document
- Proof of business address – a utility bill not more than three months old.

2.4.4.2. Background Checks

The applicant has to consent to the following checks:

- Identity checks
- Credit record check with the credit bureaux
- Fraud prevention checks

2.4.4.3. Opening Balance

The business will need to make a deposit to start the account. It is best to enquire from the banker as to the minimum opening balance on their small business bank account. The business must also ensure that the account is kept active, by transacting (making deposits and withdrawals on a fairly regular basis) - (Please note that these are broad guideline only as every bank stipulates its own procedures).

The time frame for opening a bank account is approximately one to two days and no costs are involved. The same applies for FICA registration.

2.4.5. Registering with the Department of Labour

All employers must register with the Department of Labour for unemployment insurance and occupational diseases and injuries compensation. This may be done simultaneously.

2.4.5.1. UIF Registration

To register for UIF, an employer must complete the UI-8 and UI-19 (for business employers) or the UI-8D and UI-19 (for domestic employers) forms. It is best to have information like the ID numbers and addresses of employers and workers ready before starting the process. Employers must complete the forms for both themselves and their workers. The form for the registration of workers asks for an employer reference number. Employers who do not have a reference number yet, can leave this part open. The UIF will create a reference number and send it to the employer.¹⁶⁷ The estimated time frame for registration completion is about 4-5 working days and no costs are involved.

2.4.5.2. Compensation Fund registration

All employers who employ one or more workers in connection with their business or farming activities are required to register with the Compensation Fund. A separate registration is necessary for each separate branch of a business, unless an arrangement for combined registration has been made. The following items should be noted:

- All applicable items must be completed on form WA.s 2. This document must be signed and dated.
- A copy of the CK1/2 OR CMI + CM29 i.r.o. Close Corporations and Companies, Trust documents or N.P.O certificates MUST be attached.
- A copy of ID-document(s) must be attached in respect of sole proprietors/owners/partners.¹⁶⁸

The estimated time frame for registration completion is about 10 working days and no costs are involved.

2.4.6. Registering with the Local Municipality

2.4.6.1. Business Licenses

As mentioned in 2.3.2.7, in general, businesses are no longer required to obtain a business license to operate. The exceptions are:

- Sale or supply of meals or perishable foodstuffs
- Provision of certain types of health facilities
- Hawking in meals or perishable foodstuffs.

¹⁶⁷Dept of Labour

¹⁶⁸Department of Labour

Table 2.4- Categories of Business requiring License to Operate

Category	Description	*Estimated Application Fee
Sale or supply of Meals (Including Tourism Accommodation)	Foodstuffs handled or prepared in form of a meal	R 50.00
Baths and Saunas	Gyms, health centres, Turkish baths, saunas	R 50.00
Massage & Infrared Treatment	Masseuses, aromatherapy, etc.	R 50.00
Escort Agency	Providing services of an escort	R 50.00
Devices	Business premise with three or more electronic machines	R 50.00
Pool, snooker, billiards	Business premises with three or more tables	R 50.00
Nightclub or Disco	Dances, raves, etc.	R 50.00
Cinema or Theatre	Showing of films, dinner theatre, live shows, bands, etc.	R 50.00
Adult Premises	Adult shops, etc.	R 50.00
Hawkers	Food prepared and sold on site, such as rolls, etc.	R 25.00
*Fees based on Mangaung Municipality. Application fees may differ for each municipality		

The following document must accompany the registration form when applying for a license:

- Identity document and a copy thereof. If person is a foreign national, passport and a copy thereof.
- For licenses for provision of certain types of health facilities or entertainment, a certified South African Police clearance certificate obtainable from SAPS.

- For adult premises applications, a clearance issued by the Film & Publications Board.
- Land-use Planning clearances and “Certificate of Occupancy” clearances issued by the Building Development Directorate.
- A separate fee is charged for the additional documents issued by the Municipality or SAPS.

2.4.6.2. Zoning Certificates, etc.

Zoning certificates, valuation certificates, etc. are not mandatory requirements when starting a business. However, some businesses may require certificates to certify that the business’s property is correctly zoned to operate as a business, or a Municipal Valuation Certificate. These certificates are obtainable from the local municipality and the estimated cost is R 25 per document. A re-zoning application may take up to four months to complete. Should a business want to build on or develop on undeveloped land, it must apply to the relevant town planning authority for an application for authority to develop or use land.

2.4.6.3. Fire Safety

It is advisable for a business to check with the relevant municipality with regards to the Fire regulations of the area. The business may be required to undergo a fire inspection and be issued with a certificate of competency certifying the building is safe. Such certificates cost around R 700.

Licenses to store hazardous flammable materials are required by most municipalities. These include a license to store petroleum, etc. Businesses wishing to install LPG gas are also required to register and submit plans to the fire department for approval. Such licenses cost about R 250.

2.4.7. Registering as an Exporter or Importer

All persons who will be exporting commercial goods from South Africa must register with SARS. The same applies to any person wishing to import commercial goods into the country.

To register as either an importer or exporter, a person must obtain a form (DA 185) from SARS to register as a customs and excise client. SARS also require additional documentation. These documentations are:

- One of the following documents to prove bank details:
 - o A cancelled cheque;
 - o A legible certified copy or original bank statement which confirms the account holder’s name, account number and branch code;
 - o An original letter from the bank on an letterhead; or
 - o An original auto bank statement.
- Certified copies of the following documents (whichever is relevant):

- o Registration certificate of business (as issued by the Registrar of Companies or Master of the Supreme Court in the case of a Trust);
 - o Municipal account to confirm the address details;
 - o Agency Contract between agent and foreign principal;
 - o Duly completed DA 185.C;
 - o Duly completed DA 185.D;
 - o VAT, IT, PAYE, SDL, UIF letters from SARS to confirm revenue registration details;
 - o Telkom and/or cell phone account to confirm contact details; and
 - o Identity/passport documents of –
 - Individual
 - Partnership, Close Corporation and Trust (All Members / Partners / Trustees)
 - Company (All Directors, including Managing Director and Financial Director)
- Any other information as the Commissioner for SARS may require.
 - Any applicant contemplating to operate at more than one place of entry must file a separate application with the relevant Controller / Branch Manager in that area.

Once the form is submitted, it takes approximately 10 working days to process an export application and up to 60 working days to process an import application. No fees are payable to register with customs and excise.¹⁶⁹

2.4.8. Registration of Abnormal Vehicles

Many SMEs, especially in the Agricultural Sector, rely on the transportation of their goods. Should a company make use of its own vehicles, it must ensure that it applies for the required permits. In the case of agriculture, this pertains to tractors and other vehicles with abnormal measurements. In special circumstances, where vehicle or load exceeds the regulated maximum weights and dimensions, the relevant Provincial Administration may issue a permit authorising it to operate for a specified period on a public road.

Vehicles used for the conveyance of abnormally heavy loads as well as overweight mobile cranes have to be approved by the permit office and entered in a "Register of Abnormal Vehicles and Vehicles Used for Conveyance of Abnormal Loads" (AV Register). When a vehicle is altered in any way, or ownership changes, or the operator is changed, it must be reregistered and such changes be reflected in the AV Register.

¹⁶⁹ Customs and Excise. SARS

Before a vehicle is entered in the AV Register, its owner must submit full details of the vehicle to the relevant permit office and, if required, calculations of its load capacity. The permit office will require the vehicle to be inspected by an engineer or technical representative of the permit office. If compliant, the vehicle will then be entered in the AV Register for that province and a sequence number and/or an AV number will be allocated to it. The owner will be advised as to the maximum load for which a permit will normally be granted.

Vehicles are normally AV registered in the province where they are licensed. When the need arises, registration may be done in another province. In the case of an articulated vehicle the registration of the trailer takes precedence. Any re-registration is fully charged for except when such re-registration is forced on the owner by the authorities such as by changing the number plate system.

The object of granting permits is not to extend the capacity of normal vehicles. When a load can be carried legally (or with a lesser degree of abnormality) by using a more suitable vehicle, then permits (and registration of vehicles) will not be permitted. Trailers with tandem axles or truck-tractors with single rear axles will therefore not be AV registered.

The registration of all vehicles in the Abnormal Vehicle Register must be renewed every five years in order to keep the register current and to reflect changes and alterations made to such vehicles. A combination registration will be valid while all individual vehicles in the combination are valid. A registration fee will be levied for sequence re-registrations.¹⁷⁰

2.5 Sector Specific Business Registrations

The previous section (2.4) centred on the generic procedures for registering a business. The Free State government and ILO want to emphasise certain categories of SME and to that purpose, this section will focus on registration procedures within these identified sectors. The sectors are:

- Non-profit Organisations and Social Enterprises
- Agriculture
- Tourism
- Construction
- Social Services

¹⁷⁰ Administrative Guidelines For Granting Of Exemption Permits For The Conveyance Of Abnormal Loads: Dept of Transport

In most instances, the business registration methodology for these sectors is essentially consistent with the requirements for other sectors. Registration for a business name, tax purposes, labour regulations and the establishing of bank accounts are all salient features of any business registration and will not be addressed in this section again, however these procedures must be seen as an integral part of business registration when talking about sector specific regulations. Some aspects are, nevertheless, unique to each of the aforementioned sectors. Each sector is examined more closely below.

2.5.1. Non-profit Organisations and Social Enterprises

The most popular route taken by communities/ groups and individuals in establishing social services is via registering a Non-profit Organisation (NPO). An NPO is defined, in terms of section 1 of the NPO Act, 71 of 1997 as a trust, company or other association of persons established for a public purpose and of which its income and property are not distributable to its members or office bearers except as reasonable compensation for services rendered. Nongovernmental organisations (NGOs) and community based organisations (CBOs) are collectively known as non-profit organisations (NPOs). In some instance, NPOs are also referred to as Civil Society Organisations (CSO) or Social Enterprises. It must be noted that not all social entrepreneurial ventures fall within the ambit of NPOs. Social entrepreneurship involves individuals who operate a business based on shared social goals, whilst still adhering to market principles. Examples include clinics which charge market rates for their services, but then utilise the profits to subsidise the poor patients. In South Africa, the best example of such social economic entities are known as Co-operatives. While Co-operatives fall well within this definition of Social Enterprise, various forms of CSOs (Civil Society Organisations) do not. These include both NPOs and NGOs and are commonly referred to as part of the social economy in South Africa. This is mainly due to the existence and work by the National Development Agency (NDA). The NDA is seen as a “conduit of funding and support” to such civil society organisations which includes community groups, Faith Based Organisations (FBOs), NPOs, NGOs, etc. The NDA is clear about the fact that some programmes which are more social in nature (such as an Early Childhood development programme) is intended to remedy a specific social need and that the programme may not be sustainable after its grant funding runs out. It is therefore evident that the definition about social entrepreneurship is somewhat unclear in South Africa. However, the global definition of Social Enterprise is best described by the *BC Centre for Social Enterprise* as a “revenue-generating business with a twist.”¹⁷¹ Whether operated by a non-profit organization or by a for-profit company, a Social Enterprise has two goals: to achieve social, cultural, community economic or environmental outcomes; and, to earn revenue. On the surface, many Social Enterprises look, feel, and even operate like traditional businesses. But looking more deeply, one discovers the defining characteristics of the Social Enterprise: mission is at the centre of business, with income generation playing an important supporting role.

¹⁷¹“What is Social Enterprise?” BC Centre for Social Enterprise / Resilient Communities Canada. 2013

There often exists confusion with regards to the terminology of NPOs. The term “Non-Profit Organisation” is not a legal entity, but rather a status which requires separate registration. Once a company is registered as a not-for-profit company, it may also register as an NPO.¹⁷²

It must be noted at this time that a distinction must be made between an NPO and a Public Benefit Organisation. Specifically, a PBO is an entity that qualifies for tax exemption on the basis that it provides activities for public benefit. As with an NPO, a non-for-profit company, such as a trust, can apply with SARS for PBO status, which will provide it with tax relief.

a) The National Development Agency

The National Development Agency's primary mandate is to eradicate poverty by granting funds to civil society organizations that implement developmental projects of poor communities. This comprises reinforcement of the institutional capacity of civil society organizations that provide services to poor communities in order to enable them to access developmental resources towards gaining autonomy.

The purpose of the NDA is to provide development grant funding to civil society organisations in order to implement cohesive and sustainable community-driven programmes. This enables the NDA to contribute towards the eradication of poverty by focusing on the following main areas:

- Early childhood development: the NDA aims to contribute to the ECD sector through interventions that support food security at ECD sites, strengthen the institutional, leadership and management capacity of ECD sites and improve the infrastructure of ECD sites.
- Food security: the NDA aims for sustainable food security for poor households and communities by partnering with organisations engaged in food security via resource sharing and collaboration.
- Income generation (programmes and projects): the NDA envisions enhanced livelihoods and self-reliance via income creation and job opportunities.
- Capacity building: the NDA wishes to develop the capability and capacity of civil society by facilitating access to and assist in utilising developmental resources towards the aim of self-reliance.
- Support of vulnerable groups: the NDA assists in improved socio-economic opportunities for women, youth, children and people with disabilities.¹⁷³

b) Registration

The following sections will deal with the various aspects regarding registering an NPO. This will also inform the registration of Social Enterprises, as some Social Enterprises will register wholly as NPOs

¹⁷²¹⁷² *A guide to legal forms for Social Enterprises in South Africa*. Legal Resources Centre. ILO. 2011

¹⁷³ NDA Business Overview. 2013

or as hybrids of NPOs and private companies. Currently, in South Africa, there is no legal structure of incorporation which specifically caters to Social Enterprises. . Consequently, social entrepreneurs opt for those entities which they find best suit their category of business. As mentioned earlier, this involves that these companies sometimes form either a profit- or non-profit company, or a hybrid of both. There are some structures in place which ensure credibility for NPOs, such as the Register of Non-profit Organisations, which is a voluntary registration facility that enhances the credibility of the registered NPO as it reports to a public office. The NPO Directorate, as a public office, holds information about registered NPOs for the public to access. This, therefore, increases the transparency and accountability of the organisation beyond its immediate role-plays. This accountability and transparency improves the governance of an organisation as it is also expected that a registered NPO must comply with the requirements of the NPO Act. The NPO registration status is also a funding requirement for most donor and funding agencies, such as the NDA. The national NPO registration facility therefore brings NPOs into a public system that allows for information about the sector to be gathered and made publicly available which in many ways increases the confidence of the public in the non-profit sector. Any organisation that is not working for profit and is not part of government can apply for registration.

These are mostly the following:

- Non-Governmental Organisations (NGO)
- Faith Based Organisations (FBO)
- Community Based Organisations (CBO)
- Trusts that have registered with Master of the Supreme Court under the Trust Property Control Act 57 of 1988.
- Organisations that have registered as Section 21 Companies under the Company Act 61 of 1973.
- Any other voluntary association that is not-for-profit.¹⁷⁴

To apply for registration as a NPO, organisations must fill in a prescribed application form and submit it to the Directorate for non-profit Organisations with two copies of the organisation's founding document i.e. a constitution for a volunteer association; memorandum and articles of association with the company's registration letter for a not-for-profit company; and a deed of trust with the trustees' authorisation letter for a trust. The founding document of the organisation must meet the requirements of section 12 of the NPO Act. Once the organisation is registered, it is obligated, in terms of sections 18 and 19, to submit within nine months after the end of its financial year, annual reports (a narrative report, annual financial statement and an accounting officer's report) including any changes to the organisation's constitution, physical address and office bearers. A thirty days' notice is served to all those registered NPOs whose reports are due as per requirements of section 20 of the NPO Act. Failure to comply with this notice, may result in an organisation's registration status to be cancelled in terms of section 21 for the NPO Act.¹⁷⁵

¹⁷⁴Department of Social Development

¹⁷⁵Department of Social Development

Unlike businesses that earn their income by selling goods or services, and unlike the government whose resources are provided by taxation, a non-profit organisation does not own the resources it raises. NPOs are expected to be careful and effective managers of the resources entrusted to them by donors, sponsors and the state. Financial management systems need to be developed and maintained by an organisation's office bearers to ensure the appropriate use of resources.

Generally this can be achieved by:

- Setting up appropriate financial systems and employing qualified persons, either full-time, part-time or voluntarily to administer and manage these systems;
- Developing a financial policies and procedures manual (in the case of maturing NPOs) that might include: Financial statement presentation, distribution and timing of financial statements, system of accounting codes, bank statement reconciliation procedures, investment policies, cheque signing procedures, travel expense and per diem policies, income collection and recording systems, payroll policy, insurance policies, controls over fixed assets, controls over inventories (if applicable), budgeting procedures, tax procedures (if applicable) and conflicts of interest;
- Complying with South Africa's accepted accounting and auditing practices, as regards procedures, banking, reporting and record keeping;
- Conducting annual financial audits;
- Preparing realistic annual organisational income and expenditure budgets.¹⁷⁶

c) Annual Reports

In terms of the non-profit Organisations Act, 1997 (No 71 of 1997), registered Non-profit organisation office bearers (Chief Executive Officers, or governing body Chairpersons, or both) must prepare and submit their annual narrative and financial reports to the Department of Social Development's Non-profit organisation's Directorate. These two reports will contain:

i. A Narrative (written) Report:

- This describes the organisation's activities over the previous twelve months, and includes the following sections:
- Section A: Basic details about the organisation on the form provided.
- Section B: The organisation's major achievements over the year, in response to the questions provided.

¹⁷⁶Codes of Good Practice for South African Non-profit Organisations (NPOs). DSD

- Section C: List of important meetings held by the organisation during the year, and details of any changes to your constitution.

ii. Financial Report:

The financial report must be completed by a registered accounting officer or an auditor. (An accounting officer is a person who is registered in terms of section 60 of the Closed Corporations Act). The financial report includes the following sections:

- Section A: The organisation's income and basic accounting details on the form provided.
- Section B: A copy of your most recent Annual Financial Statements, which include a Balance Sheet and an Income and Expenditure Report.¹⁷⁷

All registered NPOs must comply with the requirements of sections 16-23 of the Act. The main requirements are to submit reports and inform the Directorate of any changes within the NPO.

The specifics are set out below.

- The Documentation of the NPO (Section 16 & 17 Obligations)
 - o The registered status and registration number of the NPO must be reflected on all its documents.
 - o The NPO must comply with the provisions of its founding document.
- Finances of the NPO (section 17 Obligations) Every registered NPO must:
 - o Keep accounting records of its income, expenditure, assets and liabilities accordingly to the standards of generally accepted accounting practice (GAAP).
 - o Draw up financial statements, within six months after the end of its financial year, which must include at least:
 - a statement of income and expenditure for that financial year; and
 - a balance sheet showing its assets, liabilities and financial position as at the end of that financial year.

Within two months after drawing up its financial statements, the organisation must arrange for a written report to be compiled by an accounting officer.

The Accounting Officer report must state whether or not:

- the financial statements of the organisation are consistent with its accounting records;
- the accounting policies of the organisation are appropriate and have been appropriately applied in the preparation of the financial statements; and

¹⁷⁷NPO Annual reports. DSD

- the organisation has complied with the provisions of this Act and of its constitution which relate to financial matters.

In addition, it is the Accounting Officer's responsibility to preserve each of its books of account, supporting vouchers, records of subscriptions or levies paid by its members, income and expenditure statements, balance sheets and accounting officer's reports, in an original or reproduced form, for at least five years.

d) Required Information to be submitted to the NPO Directorate

Every registered non-profit Organisation must, in writing, provide the Directorate with:

- Within nine (9) months after its financial year, a narrative report of its activities in the prescribed form together with its financial statements and the accounting officer's report accordingly to its obligation of keep records.
- the names and physical, business and residential addresses of its office-bearers within one month after any appointment or election of its office-bearers even if their appointment or election did not result in any changes to its office-bearers;
- a physical address in the Republic of South Africa for the service of documents to be received from the Directorate.
- notice of any change of address within one month before a new address for service of documents will take effect; and
- such other information as may be prescribed.

e) Changes to the Founding Document (Section 19)

When the NPO changes its constitution or name, it must provide the NPO Directorate with:-

- A copy of the resolution and a certificate signed by a duly authorised office-bearer confirming that the resolution complies with its constitutions and all relevant laws;
- Where the NPO has resolved to change its name, the original of its current certificate of registration.

f) Winding-up or Dissolution of the NPO (Section 23)

When the organisation resolves to wind-up or dissolve it must, within one month after completing of the dissolution process, send to the Directorate a written notice that the organisation dissolved with the following documentation:

- Certified copies of all relevant documents confirming the winding up or dissolution; and
- A copy of the narrative report, financial statements and the accounting officer's report for the period from its previous financial year end of the written notice.

g) Not-For-Profit companies require the following to be considered a functioning entity:

- A minimum of 2 directors
- 7 subscribers (The directors can also be subscribers)
- Please note: As there is no shareholding in a Section 21 the function of the subscribers are to appoint the directors.

h) Important factors to consider

- All directors should undergo a credit check prior to opening the bank accounts
- Tax exemption is not automatic and the directors must apply for such status from SARS
- Section 21 companies are subject to annual audits¹⁷⁸

i) Registering a non-profit company with the CIPC¹⁷⁹

For a civil society organisation to be recognised as a legal entity, it must register as a non-profit company (NPC) with the Companies and Intellectual Property Commission (CIPC). NPCs are entities that are set up to help people, protect the environment or to lobby for some good cause. They could include churches, charity organisations and cultural organisations. The primary objective of an NPC is to benefit the public, not to make profit. The income and property may not be distributed to the incorporators, members, directors or officers of a non-profit company, except as reasonable compensation for services rendered by them. All of a non-profit company's assets and income must be used to advance its stated objectives, as set out in its Memorandum of Incorporation (MoI).

A minimum of three incorporators must complete and sign the MoI. A minimum of three directors must be appointed. Non-profit companies must at all times have at least one director (unless MoI indicated a higher minimum number of directors). The appointment of an auditor and company secretary is not mandatory but optional.

i. Non Profit Companies can register as a:

- o standard Non Profit Company (with members)
- o standard Non Profit Company (without members)
- o customised Non Profit Company (with members),
- o customised Non Profit Company (without members)

ii. A NPC must reserve a company name by completing the Application to Reserve a Name, Form CoR 9.1.

¹⁷⁸ Codes of Good Practice for South African Non-profit Organisations (NPOs). DSD

¹⁷⁹ Registration of NPO. CIPC

It must pay a filing fee of R75 if submitted manually or R50 if filed electronically. A name reservation is valid for six months. The name of a non-profit company will end with "NPC".

A company must submit the following supporting documents with the application:

- certified passport copies (if foreign national) or certified Identify Document (ID) copies (if South African) of all indicated initial directors and incorporators
- a certified ID copy of the applicant if the application is not made by one of the indicated initial directors or incorporators
- if an incorporator is a juristic person, then a power of attorney for the representative authorised by that juristic person to incorporate the company and sign all related documents
- if another person incorporates the company and signs all related documents to the incorporation on behalf of the incorporators and initial directors, a power of attorney and certified ID copy of such a person is required
- if a name was reserved before the filing of incorporation documents, then a valid name reservation document is necessary.

iii. If a person is registering a standard Non Profit Company (without members), the following forms should be submitted to the CIPC:

- CoR15.1C
- CoR 14.1
- supporting documents
- The following documents may be filed with the CoR15.1C:
 - o CoR14.1 Annexure A
 - o CoR14.1 Annexure B if name to be reserved at incorporation

iv. If an auditor, audit committee members and/or company secretary is appointed or if registering a customised Non Profit Company (without members), the following forms must be submitted to the CIPC:

- CoR15.1D
- CoR 14.1
- supporting documents
- The following documents may be filed with the CoR15.1D:
 - o CoR14.1 Annexure A
 - o CoR14.1 Annexure B if name to be reserved at incorporation
 - o CoR14.1 Annexure C if ring fencing

- o CoR14.1 Annexure D if auditor, audit committee members and/or company secretary is appointed
- v. When registering a customised Non Profit Company (with members), the following forms must be submitted to the CIPC:
 - CoR15.1E
 - CoR 14.1
 - supporting documents
 - The following documents may be filed with the CoR15.1E:
 - o CoR14.1 Annexure A
 - o CoR14.1 Annexure B if name to be reserved at incorporation
 - o CoR14.1 Annexure C if ring fencing
 - o CoR14.1 Annexure D if auditor, audit committee members and/or company secretary is appointed

If a proposed name is rejected, the company may still be registered and the registration number then becomes the name of the company at incorporation, until such time as an appropriate name has been reserved or approved.

- vi. Estimated time frame and costs
 - It takes 5-10 working days to reserve a name for a company.
 - It may take 5 to ten working days to register a non-profit company.
 - The cost for a Memorandum of Incorporation (Subject to allowed reduction) for a standard non-profit company (CoR 15.1C) is R175.
 - The cost for a Memorandum of Incorporation (Subject to allowed reduction) for a customised non-profit company with members (CoR 15.1D) or without members (CoR 15.1E) is R475.
 - An electronic name reservation costs R50.
 - A manual filing of name reservation costs R75.¹⁸⁰

¹⁸⁰ Registration of NPO. CIPC

j) Tax regulations and exemptions¹⁸¹

Preferential tax treatment is granted to non-profit organisations established for the benefit of the general public. However, this preferential treatment will only be available to organisations complying with the provisions of the Act and related legislation, both on application for exemption from taxes and duties, and thereafter on a continuous basis throughout the existence of the organisation.

i. To be approved by the Commissioner as a PBO an organisation must be constituted in one of the following ways:

- A company incorporated and registered in the Republic under section 21 of the Companies Act, 1973 whose founding document is a memorandum and articles of association.
- A trust established in the Republic and is registered with the Master of the High Court whose founding document is a trust deed.
- An association established in the Republic, as a voluntary association of persons whose founding document is a constitution adopted by its members.
- A branch established in the Republic by a foreign charitable organisation which is exempt from income tax in its country of origin.

The Commissioner may approve an organisation as a PBO only if its constitution or founding document meets a number of prescribed requirements set out in Section 30 of the Act. The founding document or constitution must clearly state that the activities and resources of the organisation must be exclusively applied in the furtherance of its stated object of conducting one or more approved PBAs. A clause must also be included which clearly sets out the aims and objectives of the PBO, which must be to carry on one or more approved PBAs. It is not adequate to make a general statement to this effect and specific activities including projects and programmes must be identified. The founding document must also provide for the requirements as set out hereafter. When considering an application for exemption, the founding document as a whole will be examined to ensure that these requirements are complied with, notwithstanding the specific wording used to give effect thereto.

ii. Registration with the Director of NPOs

It is no longer a precondition for a PBO to register with the Director of Non-Profit Organisations (NPOs) in terms of the Nonprofit Organisations Act, No. 71 of 1997, in order to be approved as a PBO in terms of the Act. Such registration is a voluntary commitment by an organisation. However, the Commissioner may, upon request by the Director of NPOs, withdraw approval of a PBO if the PBO is convicted of an offence under the NPO Act.

¹⁸¹ Tax Exemption Guide for Public Benefit Organisations in South Africa. 2007. SARS

iii. Regulation on independent schools

Independent schools which are registered as such in terms of the SA Schools Act, 1996, can be established as an association of persons or as a trust or a company incorporated under section 21 of the Companies Act, 1973. The school will therefore have a constitution, trust deed or memorandum and articles of association as a founding document. Provided the activities and the founding document comply with the provisions of section 30, the Commissioner may approve the school as a PBO. If the school is approved as a PBO it may also apply for approval in terms of section 18A to issue receipts permitting tax deductibility of donations.

iv. Regulations in terms of VAT

The terms “public benefit organisation” and “public benefit activity” which are used for income tax purposes are not used in the VAT Act. Instead the VAT legislation refers to an “association not for gain” and a “welfare organisation”. Both entities qualify for special VAT treatment. Companies incorporated under section 21 of the Companies Act, 1973 do not automatically qualify as associations not for gain or welfare organisations for VAT purposes. Associations not for gain and welfare organisations are included in the VAT system. The benefit of this inclusion is that if they can register for VAT, they can claim the VAT that they incur as input tax and only levy output tax where there is a charge for the supply of goods and services.

For VAT purposes, any person is required to register for VAT if an enterprise is carried on and taxable supplies in excess of R300 000 for any 12-month period are made. However, where the value of taxable supplies is less than R300 000 for any 12-month period, but exceeds R20 000 a person may register voluntarily. A person cannot register if only exempt supplies (such as education) are made.

v. Employees’ Tax

The fact that a non-profit organisation has been granted an income tax exemption by SARS does not necessarily mean that it is exempt from employees’ tax. Employees’ tax is the tax that an employer has to deduct from the remuneration that it pays to its employees. The employer must then pay this deducted employees’ tax over to SARS on behalf of each of its employees as a payment towards that employee’s personal income tax liability. A non-profit organisation will, therefore, have to register for employees’ tax with SARS where one or more of its employees earn remuneration that is sufficiently high to be liable for the deduction of employees’ tax.

vi. Unemployment Insurance Fund (UIF) contributions

A non-profit organisation that pays remuneration to its employees will also be liable for unemployment insurance fund (UIF) contributions unless it qualifies for certain exemptions. These contributions must be paid to the UIF office of the Department of Labour or to the local SARS branch where the non-profit organisation is also liable for employees’ tax or the skills development levy.

Registering of a Social Enterprise other than an NPO

As mentioned earlier, a Social Enterprise is not obligated to register as an NPO. It may also choose from other available legal structures to ensure it reaches its intended objective. It is advisable that organizations familiarise themselves with the available options and choose the one best suited to their aims. These structures include:

- Not-for-profit Companies such as:
 - o Section 21 Company
 - o Voluntary Association
 - o A Trust
- For-profit Companies, such as:
 - o A Co-operative
 - o A Private Company

The predominant difference between all these legal structures is that they are divided into two categories, namely *non-profit* and *for-profit* companies. The Voluntary Association, Trust and NPO fall within the category of non-profit, whereas the Co-operative and Private Company will constitute for-profit companies.

As mentioned previously in this document the most distinct difference is that NPOs aim to provide a public service in various areas ranging from social and welfare concerns to charity and religious issues. Any profits realised from a NPO may only be re-invested in the social mission of the organisation and as such, members do not share in any profits made. Even once an NPO is dissolute, members cannot recover any assets, as all assets are passed on to any similar organisation with a similar vision and purpose. Traditionally, most NPOs engage in fundraising efforts to raise capital to cover operating expenditure, as these entities rarely generate adequate income on their own. In contrast, the primary goal of any for-profit company is to generate profit and to distribute such profit to owners, members or even employees. Such companies raise capital via means of loans or equity from banks or other financial institutions, which must be repaid. Should the company falter, all assets are distributed amongst its members.

There are advantages and disadvantages to both these entities that will inform the decision making of any new Social Enterprise venture. The advantages to both are listed in the table below.

Table 2.5: Comparison of Advantages to Not-for-profit and For-profit Entities

Not-for-profit Company Advantages	For-profit Company Advantages
Access to grants and contributions only accessible to not-for-profits, including Socio-Economic Development funding through B-BBEE. Funding from government sectors that will only provide funds to registered NPOs.	Flexibility in terms of dissemination of profits, e.g. pay-outs to owners and investors as well as investing in the social purpose.
Tax exemption for the entity's income and for donations to it (If the company has Public Benefit Organisation status)	Access to traditional business finance, including equity if required, debt finance that non-profits might find difficult to

	obtain.
Public image is one of social purpose enterprise, from which private benefit is restricted; may attract customers in some circumstances as well as donations.	Access to enterprise development funding through B-BBEE (If entity has the required status).
	Public image one of effectiveness and professionalism; may attract customers in some circumstances.

(Source: *A guide to legal forms for Social Enterprises in South Africa*. Legal Resources Centre. ILO. 2011)

2.5.2.1. Section 21 Companies

Under the previous Companies Act 61 of 1973, Section 21, a non-for-profit company was allowed as an association incorporated “not for gain”. As such, section 21 companies resemble for-profit entities in their legal structure, but are not allowed to share capital, distribute shares or pay dividends. These companies are limited by guarantee, indicating that if the company should fail, the members are obligated to pay a certain specified amount to settle debt with creditors.

It must be noted that non-profit companies are viewed by the New Companies Act of 2008 as the *successors* to the associations incorporated under section 21 of the old 1973 Act. In some sense, this means that the old “Section 21” companies will not be registered anymore, however, the Act contains transitional provisions which provide for pre-existing section 21 companies to be non-profit companies in terms of this Act. As such, section 21 companies, after the New Companies Act came into force (“effective date”), continue to exist as though they were incorporated and registered in terms of the New Companies Act with their respective names and registration numbers. They are also required to change the ending expressions of their names to ‘NPC’.¹⁸²

In terms of the New Companies Act, the Memorandum and Articles of Association is replaced by one comprehensive document, the Memorandum of Incorporation. Companies have two years after the effective date to adopt a memorandum of incorporation in order to bring them in line with the New Companies Act. This means that for the first two years after the effective date, every non-profit company will be deemed to have amended its memorandum of incorporation as of the effective date to expressly state that it is a non-profit company.

Section 21 Companies are currently deemed to be public companies in terms of the 1973 Act. However, in terms of the New Companies Act, non-profit companies are an entirely separate type of company. Consequently, the distinction between private and public companies will not be applicable to non-profit companies.¹⁸³ In point of fact, the new Companies Act has supplanted Section 21 Companies with Non-Profit Company. NPOs have a legal nature of their own, which is quite different from public and private companies; they are also dealt with uniquely under the new Act. What makes this different to the previous dispensation is that NPOs are not burdened as much by regulatory compliance as Section 21 Companies (or public companies) used to be.¹⁸⁴

¹⁸² *Public Benefit Organisations under the new Companies Act*. C. McFadden. Fasken Martineau. 2012

¹⁸³ Ibid.

¹⁸⁴ *A guide to legal forms for Social Enterprises in South Africa*. Legal Resources Centre. ILO. 2011

In summation, the effects of the New Companies Act on pre-existing non-profit companies or “Section 21” companies, are as follows:

- Such companies may retain their approved names and designated company registration numbers;
- These companies are now referred to as non-profit companies and the acronym ‘NPC’ will be added at the end of their names;
- The companies have two years within which to adopt a memorandum of incorporation; and
- These companies are not treated as public companies.

a) Founding Documents (Memorandum of Incorporation)

Section 21 companies were governed by what is known as a Memorandum and Articles of Incorporation, which have now been amalgamated into the Memorandum of Incorporation (MOI). This Memorandum sets out the goals and objectives of the company. All property and/or income must only be utilised to achieve these said objectives; no income may be distributed to members, except for reasonable compensation for carrying out their duties. Should the company be dissolute, all assets have to be transferred to a similar company with similar objectives. The format for the Memorandum can be quite comprehensive and it is advisable to obtain the legal services of an attorney to draft the document. Existing companies have two years to change their Memorandum and Articles to the new MOI.

b) Governance

A company is governed by two levels, i.e. the members and the directors. Members may exercise their power in meetings, whereas directors have executive responsibilities. Members have the power to appoint or remove directors, they may amend the MOI and dispose of assets. Directors are required to convene annual general meetings (AGMs) during which all matters pertaining to the company are attended to (including the presentation of audited financial statements).

c) Ongoing Lifecycle requirements

All companies registered under the new Companies Act have to comply with various regulations in order to remain registered. These include:

- The company must appoint auditors and inform the Registrar of Companies of any change of auditors.
- The company must appoint a registered address and inform the Registrar of any change of address.
- The company must keep up-to-date registers of members and directors in the prescribed form.

- The directors' names must appear on all letters, catalogues and circulars distributed or published.
- Directors must ensure that proper minutes and attendance registers are kept of all meetings.
- The company must hold an annual general meeting in accordance with the prescribed procedures.
- The company must keep financial and accounting records in the prescribed form and present these to the AGM of members and file them with the Registrar.
- The directors' report must be presented to the AGM.

Currently, there is no accord between the Companies Act and the NPO Act. Therefore, should the members or directors wish for the company to be recognized as an NPO in terms of the NPO Act they would need to register separately with the NPO Directorate. Once registered as an NPO, it must comply with the ongoing regulatory requirements of the NPO Act as discussed earlier in this document.

2.5.2.2. Voluntary Associations

A Voluntary Association (VA) is formed in order for a group of people (three or more) to agree on working together in an association for the purpose of achieving a common goal with regards to a non-profit objective. Such an agreement does not necessarily have to constitute a written agreement, but may be a verbal arrangement, however, written agreements safeguard participants in any future disputes. VAs fall under the auspices of the Non-Profit Organization Act 71 of 1997. A VA always exists independent from its members. This implies that a VA will continue to exist even when membership to the organisation change, a practise known as perpetual succession. This ensures that the identity of the VA does not change, even if the members do. Furthermore, all assets and liabilities are held separate from members. Voluntary Associations have the option of owning property in their own names.

a) Compliance for a Voluntary Association

Voluntary Associations as governed by the NPO Act are required to comply with the following regulations:

- A VA must reflect its registered status or registration number on all its documents
- It is required to keep accounting records
- It must draw up financial statements
- It has to arrange for an accounting officer to prepare a written report
- It has to preserve its books of account, supporting vouchers, membership records and financial records and documents
- All VAs report to the Director of NPOs.

b) The Constitution

The Constitution of a VA should set out all the rules as agreed by members in order to ensure smooth operation of the Association. Such constitutions vary, but require some of the basic clauses that have to be inserted in order to comply with the NPO Act (as stipulated in Sections 12 and 13 of the Act). The requirements are:

- The Association's name must be clearly stated
- All objectives must be clearly stated.
- The legal status of the Association must be clearly established.
- It must be stipulated that all proceeds, income and property of the Association are to be utilised to obtain its objectives and not to be distributed among members (except for reasonable compensation for work)
- A dissolution procedure must be stipulated in the Constitution
- The powers of the Association must be clearly set out
- The structure of the Association must be specified, such as governance, management, meetings, etc.
- There must be options and explanation on to change the Constitution
- The Constitution must clearly stipulate how money is to be spent and accounted for, as well as a specified financial year and the bank account.
- The Constitution has to stipulate any applicable fees to be paid by members
- The Constitution sets the limit for the number of individuals who may become members of the Association
- The Constitution sets out the election of members who will hold management positions, including the secretary, treasurer, chairperson and vice-chairperson. These elected members are charged with taking care of the Association's day-to-day activities.

c) Ongoing Lifecycle compliance for a VA

A Voluntary Association, as with all NPOs, is not required by law to register with any government body. Should a VA register with the NPO Directorate, however, it is accountable for good governance and ongoing regulatory requirements, which can only enhance the functioning of the entity. It also reflects a certain transparency to society that it willing to be held accountable.

Once registered with the Directorate of NPOs, a VA must comply with the following obligations:

- Reflect its registered status or registration number on all its documents

- Keep accounting records
- Draw up financial statements
- Arrange for an accounting officer to prepare a written report
- Preserve its books of account, supporting vouchers, membership records and financial records and documents
- Submit to the Director of Non-profit Organisations:
 - A narrative report
 - Details of any changes of its office-bearers
 - Details of any changes of its address at which it will receive documents
 - Details of any changes in its constitution or its name.

2.5.2.3. *Trusts*

A Trust is essentially an agreement in written form (aka a deed) in which the owner or founder of the Trust transfers either property and/or funds to a group of individuals known as trustees. The trustees administer all assets of the Trust for beneficiaries to attain a certain objective of Social Enterprise. All trusts are regulated by the Trust Property Control Act 57 of 1988. Trusts are not considered as separate legal entities, except under certain circumstances (e.g. tax and insolvency) and all trusts are governed by the Master of the High Court. A trust's property has to be protected at all times and therefore all trust property is kept separate from trustees' personal properties. Should legal disputes arise, the individual trustees are sued and not the trust itself. As the NPO act and the Trust Property Act do not complement one another, once a trust is registered and it wishes to be recognised as an NPO, it will have to register with the Director of NPOs separately.

a) The Founding Document

The deed of a Trust serves as its founding document. As with Voluntary Associations, the deeds vary, however, some basic principles have to be included in all trust deeds, such as:

- Its main purpose and objectives
- The governance of the trust
- Appointment and removal of the Board of trustees
- Rights and obligation of trustees
- Dissolution procedures
- Financial guidelines
- Dispute procedures
- Security, if it needs to be furnished, has to be stipulated, as in some instances the High Court may require trustees to provide security for the trust in order to ensure the

carrying out of their responsibilities. Trustees may be exempted from security, but this must be stipulated as well.

b) The Board of Trustees

A board of trustees usually has a wide range of power to enable it to achieve the trust's objectives. This is usually similar to the powers of a board of directors in a company. Trustees have to oversee their duties with due diligence, as they are fiduciaries of the affairs of other individuals. Trustees may receive reasonable compensation for the duties they perform, unless their trust deed forbids it

c) Ongoing Lifecycle compliance for a trust

Trusts are registered by the Master of the High Court who oversees the appointment of trustees. Should any trustees change, the Master must be informed. The Master may in certain instances require the trust's financial statements or other information and he/she has the power to remove trustees from the board. This being said, most often the Master's supervision is limited and will only comply with oversight should a complaint be lodged.

2.5.2.4. *Co-operatives*

As mentioned in the previous section when discussing general company registration, a co-operative is an autonomous association of individuals who voluntarily combine their efforts and knowledge to attain a certain economic, social or cultural goal. Such a venture is wholly democratic in nature and jointly owned. As such, it may be viewed as a business unit owned and operated by a group for their mutual benefit.

(a) Governance Structure

Co-operatives, aka Co-ops, are managed by either a committee or a board of directors on behalf of members. However, the entire co-op is owned and controlled by all members, with each member having one vote.

(b) Legal Compliance

Once a Co-op has been registered with the Registrar of Co-operatives, it will have the same powers and legal rights as a company. A co-op is seen as a separate legal entity, distinct from members and their legal identity. This implies certain legalities, which are the following:

- Members' liability is limited, i.e. as a legal person, the co-op, not its members as individuals, is responsible for debts, contracts and obligations (unless fraud or gross negligence by individuals can be proven).
- The co-op's assets belong to and are registered in the name of the organisation, not its members.
- Members' personal assets are distinct from company finances and assets.

- All Co-operatives operate under perpetual succession, meaning it continues to exist even if its members and office-bearers change.
- The co-operative may engage in legal action under its own name, i.e. sue, be sued and enter into contracts.
- The Co-operatives Act stipulates that any commercial organisation with over twenty members, with the goal of making a profit, must register as either a company or a co-operative (excluding organised professions, such as attorneys and accountants).

(c) Compliance in terms of annual returns for Co-operatives

In terms of Section 29 of the Co-operatives Act (No. 14 of 2005), a Co-operative must hold its first annual general meeting within 18 months of its registration. Subsequent annual general meetings must be held within six months after the end of the preceding financial year.

i. The annual general meeting must have the following procedures on its agenda:

- Appoint an Auditor (In terms of Section 50 of the Co-operatives Act)
- Co-operative to submit a completed CR4 form to the office of the Registrar
- Approve a report of the board of the affairs of the Co-operative for the previous financial year
- Approve the financial statements and Auditors report where applicable for the previous year (In terms of Section 48 of the Co-operatives Act)
- Co-operative to submit Financial Statements and Auditors report together with completed CR7 form to the office of the Registrar of Co-operatives.
- Elect directors (In terms of Section 33 of the Co-operatives Act No 14 of 2005)
- Co-operative to submit names of elected board of directors by completing CR2 form.
- Elect a supervisory committee if required by the constitution of the Co-operative.

ii. Recordkeeping by a Co-operative

A registered Co-operative must keep (in terms of the Co-operatives Act, 2005) at its offices the following:

- Its Constitution, including any amendments thereto.
- The minutes of General Meetings in a Minute Book.
- The minutes of meetings of the Board of Directors in a Minute Book.
- A list of members / register of members setting out-
 - o the name and address of each member.

- o the date on which each member became a member.
 - o if applicable, the date on which a person's membership was terminated.
 - o the amount of any membership fees paid, the number of membership shares owned and the number and amount of member loans.
- A register of directors setting out-
 - o the name, address and identity number of each director, including former directors.
 - o the date on which such directors became or ceased to be directors.
 - o the name and address of any other Co-operative, company or close corporation where both present and former directors are, or were, directors or members.
- A register of director's interest in contracts or undertakings.
- Adequate accounting records, including records reflecting the transactions between each member and the Co-operative for the purpose of calculating the patronage proportion.
- The Co-operative must keep its accounting records-
 - o for a period of five years after the end of the financial year to which they relate, in the case its main object involves its members conducting transactions with it.
 - o for a period of three years after the end of the financial year to which they relate, in the case its main object does not involve its members conducting transactions with it.

2.5.2.5. *Private Companies*

As mentioned at the beginning of this section, a Social Enterprise has the option to register as a private company. The registration of such companies was discussed in the previous section and as such, only a brief explanatory note with regards to Social Enterprise is necessary.

Central to all private companies are the shares which may be held by up to a maximum of 50 shareholders per company. A private company is managed by a board of directors, even though ownership and control resides with its members.

a) Registration and Compliance

Under the Companies Act 2008 all private companies must be registered with the CIPC and are considered as independent legal entities. More information may be found in the previous section regarding the details of this procedure.

In terms of compliance, there are various regulatory requirements governing the operation of a private company to ensure it continues as a registered company. These include:

- The appointment of auditors. Should the auditors change, the Registrar must be informed

- Appointment of a registered address. Any change in address must be reported to the Registrar
- Up-to-date registers of members and directors in a certain format as prescribed by the Companies Act
- The directors' names must appear on all correspondence, whether it be hardcopy or electronic
- Proper minutes and attendance registers must be kept for all meetings
- All companies must hold an AGM, or annual general meeting
- All financial and accounting records must be kept in the prescribed form and be presented to members at the AGM, as well as filed with the Registrar (See subsequent section of the document with regards to ongoing life cycle requirements)
- A director's report must be presented at the AGM
- It is not necessary for private companies to lodge interim reports.
- Private company records are not available to the public

2.5.2.6. *Hybrid forms of Social Enterprise*

It is often the case that Social Enterprises wish to divide their objectives between two or more legal entities to optimise the function of their company. This is referred to as a hybrid model. The most common such entity is a combination of a not-for-profit entity, such as a Co-operative with a for-profit entity, such as a private company, thereby obtaining the best of both types of entity.

Such a hybrid is also useful in that the for-profit component can generate income for the not-for-profit part. This ensures that the investors get a return on their investments, while fulfilling their social objective. It must be said that the reverse is not permitted, in that a not-for-profit entity cannot transfer assets to a for-profit entity, except under exceptional circumstances (such as fair compensation for services). This restricts the benefits a for-profit entity may gain from a not-for-profit entity.

In other cases, a Social Enterprise may opt for more than one not-for-profit entity. Each of these may then focus separately on certain aspects that the whole enterprise wishes to achieve. The advantage is that these entities generate separate incomes and engage in fundraising as separate legal entities, spreading the risk over a wider spectrum, thereby minimising it.

On the face of it, it appears this hybrid model gives the "best of both worlds", however, the drawback lies in the fact that this requires multiple legal entities that need to be operated and registered separately, which can drive up the cost. Also, the compliance becomes convoluted as each entity must comply separately with regulatory requirements.

2.5.2.7. *Questions to ask when forming a Social Enterprise*

It is advisable that any prospective new Social Enterprise asks itself a series of questions to ascertain which business model might suit it best. In general, some of these questions are:

- Will the venture rely on grants and donations for most of its income?
- Would the enterprise wish to access social development funding?
- Would prospective clients rather deal with a not-for-profit entity, instead of a for-profit company?
- Do all members understand and accept that they will not gain financially, except for reasonable compensation for work done?
- Should the venture fail, do all members understand that no assets will be transferred to them and that they cannot benefit financially from any dissolution?

If answers to the above questions are predominantly “yes”, the most suitable model might be a not-for-profit entity.

2.5.2.8. *Tax Benefits for Social Enterprises*

Social Enterprises qualify for tax exemption if they are registered as Public Benefit Organisations. Any public benefit organisation which solely carries on certain welfare, humanitarian, health care, religion, belief or philosophy public benefit activities or solely provides funds to such a public benefit organisation and to whom a letter of exemption has been issued by the SARS Tax Exemption Unit is exempt from the payment of income tax in terms of Section 10(1)(cN) of the SDL Act. This forms part of the government’s effort to alleviate the financial burden on PBOs. NPOs are not required to register with SARS as PBOs, but should they register, they may be exempted from income tax, donation tax, estate duty, etc. Approved PBOs have the privilege and responsibility of spending public funds in the public interest on a tax free basis which they derive from donors including the general public and directly or indirectly the State. It is therefore important to ensure that exempt organisations utilise their funds responsibly and solely for their stated objectives, without any personal gain being enjoyed by any person including the founders and the fiduciaries.

Being an NPO, such as a Section 21 company or being registered under the NPO Act, is not, in itself sufficient to justify an income tax exemption. The Commissioner will approve a PBO only if its sole or principal object is to carry on one or more of the listed PBAs and only if it complies with the other prescribed requirements of the Act.¹⁸⁵ A PBO must also not pose any unfair competitions for tax-paying entities. A PBO is allowed to trade under certain conditions. To be exempt from tax, the conditions to be met are the following:

- The trade or business activity conducted must form part of any approved public-benefit activities and be central to the success of the objectives of the PBO.

¹⁸⁵ Tax Exemption Guide for Public Benefit Organisations in South Africa. SARS. 2007

- Most of the trading must be based on recovery of costs. This implies that more than 85% of trading activity should be conducted at a 100% cost-recovery basis.
- The PBO may not create any unfair competition for taxable entities who conduct the same activity.
- Any PBO conducting trading or business outside of these parameters will be taxed on its income and expenses. Should these profits be taxed, the basic exemption rule applies, wherein either the entity's income (up to or greater than R150,000) or 5% of total receipts and accruals are taxable.

In conclusion, a summary of the various options for registering a Social Enterprise is given below:

Table 2.6- Various Options for registering a Social Enterprise

Item	Voluntary association	Trust	Non-profit company	Co-operatives	Private company
Objective of Entity	An agreed non-profit objective	Owner confers property/funds to group that acts as fiduciaries of assets for the benefit of others	A goal for social or public benefit or upliftment	A common economic, social or cultural goal shared by group of individuals	Any objective, usually profit
Governing document	Either verbal agreement or constitution	Trust deed	Memorandum of Incorporation	Constitution	Memorandum of Incorporation
Relevant act	Common Law and Non-profit Organization Act, No. 71 of 1997	Trust Property Control Act, No. 57 of 1988	Companies Act, No. 71 of 2008	The Co-operative Act, No. 14 of 2005	Companies Act, No. 71 of 2008
Incorporation	Independent legal entity	Not an independent legal entity	Independent legal entity	Legal entities, if registered	Independent legal entity
Membership	Open membership, individual members	Closed membership	Open or closed membership, individual or organizational members, voting and non-voting	Open or closed membership, individual or organizational members	Closed membership

Item	Voluntary association	Trust	Non-profit company	Co-operatives	Private company
			members		
Governance	Management committee	Board of Trustees	Board of Directors	Committee of officers	Board of Directors
Registration	Not required, but can be registered with the NPO Directorate	Master of the High Court	Registrar of Companies	Registrar of Co-operatives	Registrar of Companies
Profit distribution	None Reinvested in VA's stated objectives	In line with Trust's stated objectives	None Reinvested in the NPO's stated objectives	Profit distributed amongst Co-op members	Profit distributed amongst shareholders
Tax exemption	If registered as a PBO	If registered as a PBO	If registered as a PBO	None	None

Source: The Potential of non-profit organisations in the Free State to Adopt a Social Enterprise Approach, South Africa SME Observatory and the ILO. 2013

2.5.3. Registering an Agricultural SME

2.5.3.1. Initial procedure

The aspiring business owner should firstly secure the identified land through proof of ownership or a lease agreement. It is also advisable to obtain a farm map or geographical map of the farm that includes farm boundaries and/or watering points. It is vital that the new farmer identifies potential markets and requirements for entrance into the market, as well as resources available for utilisation to develop potential commodities. Another salient aspect is to calculate the viability and economic feasibility on potential commodities and possible opportunities for value adding.

The farmer needs to source information on the different forms of businesses and select the business form most suitable for his specific circumstances. (see 2.4.2.1 category of companies). Should the business form require registration, this can be accomplished with the applicable CIPC registration procedure as per 2.4.2 above. Additional business requirements for Tax, UIF and SDL levies and the Occupational Health Compensation fund remain analogous to those applicable for a standard business.

2.5.3.2. *Points to consider when embarking on a horticulture/agronomic business:*

- Soil and water need to be analysed for quality, and the strength of the water source must be determined in terms of the available capacity.
- The potential business owner needs to consider all the relevant risks involved in establishing an agri-business.
- It is advisable that the business owner sources information on the weather conditions for the area to ensure informed decision making on the type of agronomy to be engaged in.
- The business owner should source information on the chemicals and fertilisers that would be required for the specific commodity to be produced to ensure maximum output and productivity.
- It is also suggested that any new agronomist identifies potential strategic partners such as suppliers and potential mentors.
- In order to apply effective land management strategies, the agronomist should consider identifying rotational crops, to maximise land-use, should any be advisable.
- It is vital for any new agri-business to formulate a crop production plan, which will inform cost, input requirements and estimated yield, as well as a crop rotation plan (where applicable).

2.5.3.3. *Points to consider when embarking on a livestock business:*

- The potential business owner needs to consider all the relevant risks involved in establishing a livestock venture.
- It is essential that the agri-business obtain information on all regulations, especially if the business is close to a town, in which case town planning and zoning regulations or other municipal by-laws may come into play.
- It is advisable that the business owner does a thorough veld and natural resource assessment in order to establish the carrying capacity of the farm.
- After a veld assessment has been done, technical advice should be sought on the number of animals that can be retained on the available land for grazing. This includes a fodder-flow and establishment of the gaps in the feeding cycle, as well as identifying possible gap fillers.
- The farmer can now establish the optimal production system that would best suit a marketing strategy for the highest yield possible.
- Once all the relevant information has been obtained, the drafting of the business plan can commence, which will include all the relevant data gained from the aforementioned steps.¹⁸⁶

¹⁸⁶ *Agricultural Business Plan Guidelines*. 2011. Directorate Co-operative and Enterprise Development, Department of Agriculture, Forestry And Fisheries

2.5.3.4. *Recommended production systems sizes*

It is important when drafting a business plan to take into consideration the recommended production systems for the different categories of farm production. This ensures sustainable, optimal utilisation of resources without depleting the land or incurring unnecessary wastage of assets. The following are only examples and it is advisable to contact the Free State Provincial Department of Agriculture for assistance.

1) Recommended minimum farm size for cattle

A minimum farm size of 198 ha for extensive cattle farming is recommended if a threshold of R30 000 net profit is targeted. Such a farming venture should also produce maize and have a portion of planted pasture in order to achieve optimal results. Without grain production and planted pasture, a minimum farm size of at least 350 ha may be necessary to achieve R30 000 profit per farming unit. The average carrying capacity figure for cattle in Gauteng is quoted as 8 ha/LSU (large stock units). This can be improved to even 1 ha/LSU when grain and planted pasture are provided as supplementary feedstock. On farms where grain or planted pasture is not provided, an average farm requires at least 400 ha of land to sustain a maximum of 50 LSUs (8 ha/LSU). Fifty (50) LSUs are insufficient for creating meaningful job opportunities or provide sufficient revenue to satisfy all household needs.

2) Recommended farm sizes for grain production under dry land

A minimum farm size of fifty (50) ha under dry land is recommended if a threshold of R30000 net profit is targeted for grain production.

3) Recommended minimum farm sizes for vegetables

A minimum farm size of five (5) ha under irrigation for fresh threshold of R30 000 net profit is the targeted requirement for a vegetable farming venture.

4) Recommended minimum farm units for broilers

A minimum farm unit of 5 000 ha is the recommended size for a broiler operation.

5) Recommended minimum farm units for layers

A minimum farm unit of 2 500 ha is recommended to commence a layer agri-business.

2.5.3.5. *Supporting documents required by financiers/investors/sponsors*

The supporting documents which may be required by any financiers or sponsors to financially support a farming initiative are:

- Résumés of those individuals who would be involved in the business, which include training, experience, role in the business, credit background and a personal statement of net worth;
- Credit reports, letters of reference (personal and financial);
- Names of professional advisors (technical, legal, and accounting);
- Copies of any contracts, leases, agreements or patents;

- Copies of ID documents and other certificates.¹⁸⁷

It is advisable that any landowner draws up a land use plan. A land-use plan is an elementary planning tool for each landowner and assists him/her in identifying management priorities based on the inherent characteristics of the land. Different parts of the land usually require different types of management and these prerequisites must be integrated into a working plan that, while striving for economic returns, protects the environment.

Typically, a land use plan would include a map and, depending on the scale of the operation, the map could be supported by text that could range from a simple one page document to a complex management plan.

A land use plan, to be really effective, should include the following:

- Soils profile (type, series, depth, erodibility, organic content, etc.);
- Natural vegetation profile (classified into various types, depending on detail required for effective land management);
- Description of available water sources (wetlands, dams, rivers, streams, boreholes);
- A weather profile, indicating rainfall, temperature, altitude, etc., which is important for determining suitable crop-, livestock- and wildlife carrying capacities;
- Estimated stocking rates/carrying capacity of the land;
- Climate change predictions and downscaled climate change maps (where available);
- A description of the available arable land;
- Description of crop types (in ha);
- A description of the proposed grazing camps (in ha);
- A summary of available infrastructure (roads, quarries, causeways, bridges, housing, sheds, workshops);
- A profile of waste disposal options (rubbish dumps, or a note to the effect that waste is disposed at a registered waste disposal site);
- A description of the distances to markets (road, rail).

2.5.3.6. **Conditions of Employment**¹⁸⁸

The Basic Conditions of Employment Act 75 of 1999 prescribes the minimum wages applicable to a farm worker (section 2 – 8 of the Act), however, as these prescripts are updated regularly, it is important that farmers are in possession of the latest prescribed minimum wages. Since 1 March 2006 an employer had to pay a farm worker at least the minimum wage prescribed in clause 3 of the

¹⁸⁷ *Agricultural Business Plan Guidelines*. 2011. Directorate Co-operative and Enterprise Development, Department of Agriculture, Forestry And Fisheries

¹⁸⁸ *The Green Choice Living Farms Reference*: 2009/2010. Dr. H.J. Hawkins

Act. According to the Act, no children under 15 may be employed on farms. Children between the ages of 15 and 18 must only be employed in work that does not place at risk their wellbeing, education, physical or mental health, or spiritual, moral or social development.

Written particulars of employment are required by the Act, such as details of employer name, name and occupation of the farm worker, descriptions of the work for which the farm worker is employed, the place of work, date of employment, leave particulars and periods of notice. Hours of work are prescribed in section 10 – 20 of the Act and include emergency work on Sundays, working at night, meal intervals, rest periods and public holidays. The kind of leave to which a farm worker is entitled includes annual leave, sick leave, family responsibility leave and maternity leave (sections 21-25).

In establishing verifiers/standards, the Sectoral Determination for farm workers (a copy of which is legally required to be available in the workplace at all times) would form the basic requirement, with cross-references to the various Codes of Practice and other supporting sections of the Basic Conditions of Employment Act. In addition to the Occupational Health and Safety Act, landowners need to be aware of regulations pertaining to the safe transport of workers on the farm itself, and in the transport of workers on public roads (National Road Traffic Regulations 93/19965 Regulation 247). Thus, persons may only be transported in a goods vehicle if the portion of the vehicle is enclosed to a height of at least 350mm above the surface on which a person is seated, and at least 900mm above the surface on which a person is standing. People may also not be transported in a goods vehicle compartment unless they are separated from the goods by a partition. Any person driving a vehicle for the transport of people must have a valid driver's license, be proficient in the driving of that particular vehicle and be medically fit. This applies to drivers operating on both public and private roads.¹⁸⁹

Table 2.5- Minimum wages for employees in the Farm worker Sector

Minimum rate for the period 1 March 2012 to 28 Feb 2013			Minimum rate for the period 1 March 2013 to 28 Feb 2014			Minimum rate for the period 1 March 2014 to 28 Feb 2015		
Monthly	Weekly	Hourly	Monthly	Weekly	Hourly	Monthly	Weekly	Hourly

¹⁸⁹The Green Choice Living Farms Reference: 2009/2010. Dr. H.J. Hawkins

R1503.90	R347.10	R7.71	Previous year's minimum wage + CPI + 1.5%	Previous year's minimum wage + CPI + 1.5%
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(Source: Department of Agriculture, Forestry and Fisheries)

2.5.3.7. Food Safety

There may be issues associated with food safety on a particular farm, and because of the importance that this aspect plays, particularly in the export market, the following list is an example of appropriate regulations.

In general terms, landowners whose farming activities involve the handling of food products need to consider the following basic controls in a documented hygiene procedure:

- training of workers in hygiene procedures appropriate to the product(s)
- implementation of hygiene instructions for the handling of products
- maintenance and cleaning of tools, containers and vehicles involved in the harvesting and transport of produce
- access to clean hand-washing equipment and toilets for workers in the vicinity of their work
- the use of containers exclusively for the produce
- the protection of packed produce from contamination
- clean storage facilities on the farm and temperature and humidity controls (where applicable) maintained and documented
- smoking, eating and drinking areas clearly designated and segregated from products
- workers provided with clothing/outer garments that protect products from contamination
- cleaning agents approved for application in the food industry
- all entry points to buildings suitably protected to prevent, whenever possible, the entry by rodents and birds
- baits used for the control of rodents located in a manner that non-target species are excluded
- rodenticides used only as a last resort
- water used for washing of products must be clean and tested regularly for its suitability

- any biocides, waxes and plant protection products used for post-harvest protection of the harvested crop must be registered and applied correctly and adequate records of their use maintained.¹⁹⁰

2.5.3.8. **General Safety Regulations**

General safety regulations include equipment and facilities, intoxication, first aid, emergency equipment and procedures, use and storage of flammable liquids, stacking of articles, welding, flame cutting, soldering and similar operations, the use of ladders and the use of ramps.

2.5.3.9. **Regulations for Hazardous Chemical Substances**

These regulations apply to an employer who carries out work at a workplace which may expose any person to the intake of a Hazardous Chemical Substance (HCS) at that workplace. Exposure of employees to substances hazardous to health should be prevented or, where this is not reasonably practicable, adequately controlled. Farmers need to check the names/substances of any chemical products on the farm against the list of substances in the tables available on HCS to identify whether an HCS is kept on the farm. If so, action as identified in the Regulations must be taken to prevent exposure of employees to the identified HCS.

2.5.3.10. **General Administrative Regulations**

These principles are generic for regulations under the OHSA. Farmers need to be aware of these regulations, as failure to comply would mean a farmer is guilty of an offence and liable for a fine and/or imprisonment.

These general administrative regulations include:

- access to the premises by an inspector must always be allowed
- the requirement that a copy of the OHSA and relevant regulations are readily available at the workplace where an employer has five or more persons in his employ is compulsory
- the availability of a suitable place for health and safety committees to meet and the maintenance of records of committee meetings for three years is a requisite
- a procedure for negotiations and consultations with registered trade unions of that workplace must be in place
- before designation of health and safety representatives, or, in the absence of a registered trade union, procedures for consultation with employee representatives in that workplace before the designation of health and safety representatives must be initiated
- reporting of incidents and occupational diseases and procedures associated with such incidents and diseases are mandatory

¹⁹⁰The Green Choice Living Farms Reference: 2009/2010. Dr. H.J. Hawkins

- recording and investigation of all incidents, for which records must be kept for a period of at least three years are mandatory
- procedures for the calling of witnesses at an enquiry must be in place.¹⁹¹

2.5.3.11. *Registering an Agricultural Co-operative*¹⁹²

A Co-operative is an autonomous association of persons united voluntarily to meet their mutual economic, social and cultural needs and aspirations through a jointly owned and democratically controlled enterprise organised and operated on Co-operative principles (dti). An agricultural Co-operative is a Co-operative that produces processes or markets agricultural products and supplies agricultural inputs and services to its members.

(a) The characteristics of an agricultural Co-operative

- It is an association of persons
- The Co-operative exists on a voluntary basis
- The Co-operative is based on mutual or common economic, social and cultural needs
- A Co-operative is a jointly owned and democratically controlled enterprise, based on certain Co-operative principles.

(b) The values of agricultural Co-operatives

Agricultural Co-operatives are based on the values of self-help, self-responsibility, democracy, equality, equity and solidarity. In the tradition of their founders, Co-operative members believe in the ethical values of honesty, openness, social responsibility and caring for others.

The principles of a Co-operative are -

- Democratic member control
- Voluntary and open membership
- Autonomy and independence
- Educational training and information
- Co-operation among Co-operatives
- Concern for the community
- Economic participation of members

¹⁹¹The Green Choice Living Farms Reference: 2009/2010. Dr. H.J. Hawkins

¹⁹²Guidelines For Establishing Agricultural Co-operatives. 2010. Dept. of Agriculture.

(c) Levels of Co-operatives

i. Primary agricultural Co-operatives

A primary agricultural Co-operative is a Co-operative in which all the members are individuals. The purpose of a primary agricultural cooperative is to provide employment or services to its members and to promote community development. It takes a minimum of five natural persons to form a primary Co-operative. Each member will benefit as a result of being part of the co-op. Members pool their resources to offer services to others. Members can raise funds for the benefit of their colleagues. Mostly, primary co-ops exist at local level.

ii. Secondary agricultural Co-operatives

A secondary agricultural Co-operative is a Co-operative in which two or more primary Co-operatives, including juristic persons, can form a secondary Co-operative. The members are primarily agricultural co-operatives. The purpose of a secondary Co-operative is to provide services to its members relating to the sector in which they are active. Most of secondary co-ops exist at district level.

iii. Tertiary agricultural Co-operatives

A tertiary agricultural Co-operative is a Co-operative in which two or more secondary Co-operatives, including juristic persons, can form tertiary Co-operatives. The purpose of a tertiary agricultural cooperative is to advocate the interests of the member Co-operatives to government bodies, the private sector and other stakeholders. Another name for a tertiary agricultural Co-operative is an apex organisation. An "apex" is the word for the top of a pyramid shape. These co-ops exist at a provincial level.¹⁹³

(d) Procedure for establishing a Co-operative

There are certain procedures that need to be followed in order to establish a Co-operative. Some of the salient aspects are:

- Conduct a need analysis for the following issues:
 - o Identify the objectives (exactly what the Co-operative aims to do)
 - o Equipment, buildings and other materials needed in the enterprise
 - o Financial requirements
 - o Premises (where the Co-operative will be located)
 - o Human capital

¹⁹³Guidelines For Establishing Agricultural Co-operatives. 2010. Dept. of Agriculture.

- Identify interested members
 - o Invite all interested members to the meeting
 - o Present the concept to all interested parties
- Election of steering committee which will be responsible for the following:
 - o Drawing up a business plan
 - o Drawing up a constitution, which will lay down the procedures to be followed by the Co-operative in achieving its aims and objectives
 - o Ensuring the smooth operation of the Co-operative and providing supervision
- Convening of formation meeting
 - o Election of the first board of directors occurs at the formation meeting
- First meeting of the board of directors
 - o At the first meeting of the board, the completing the following documents with the Registrar of cooperatives for consideration is conducted:
 - Copy of the constitution
 - CR1 form on the actual application form for registration
 - CR4 form on the acceptance to act as an auditor or
 - CR8 form on the exemption of appointing an auditor
 - Proof of payment from the CIPC (copy of a deposit slip or a receipt from the cashier, viz. if payment was made at CIPC offices)
- Registration will take place if the Registrar is satisfied that -
 - o The application has been made in accordance with the Co-operatives Act.
 - o The proposed name complies with the provisions of section 10 of the Act.
 - o The constitution of the Co-operative complies with the Act and the Co-operative principles.
 - o The guidelines in registering a primary, secondary and tertiary Co-operative are more or less the same, except in membership, where the minimum number of persons in the formation of a primary Co-operative is 5, whereas in the case of secondary and tertiary Co-operatives it is 2.

- o If the Registrar is satisfied that the application meets all of these conditions, then the Registrar will give the Co-operative a registration certificate with a registration number.¹⁹⁴
- Once a Co-operative is registered, it becomes a legal person. This means that it has legal powers similar to those of companies and related groups. A Co-operative must hold:
 - o Its first annual general meeting within 18 (eighteen) months of registration of the Co-operative;
 - o Subsequently annual general meetings within 6 months after the end of the preceding financial year.
- The annual general meeting must have the following procedures:
 - o Appoint an auditor;
 - o Approve a report of the board on the affairs of the Co-operative for the previous financial year;
 - o Approve the financial statements and auditor's report where applicable for the previous financial year;
 - o Elect directors; and
 - o Decide on the future business of the Co-operative
- The Co-operative must open a banking account in the name of the cooperative in which all moneys received shall be deposited as soon as possible after receipt thereof. Cheques drawn on the banking account shall be signed by one of the directors and must be countersigned by the secretary of the board, provided that a cheque shall not be signed and countersigned by the same person and that all officers who are authorised to sign or countersign cheques must furnish adequate security.
- The financial year of the Co-operative shall end on the last day of February of each year.
- The Co-operative must keep such accounting records as are necessary to reflect fairly the state of affairs and business of the Co-operative and to explain the transactions and financial position of the business of the cooperative.
- The accounting records shall be kept at the registered office of the cooperative and shall be available at all times for examination by the directors.¹⁹⁵

¹⁹⁴Guidelines For Establishing Agricultural Co-operatives. 2010. Dept. of Agriculture.

¹⁹⁵Guidelines For Establishing Agricultural Co-operatives. 2010. Dept. of Agriculture.

2.5.3.12. *Water use registration*

All water users instructed to register have the statutory obligation to do so. There are strict penalties, prescribed in the Water Act, for those who do not comply. In future, when water users are required to apply for licences, those who did not register will lower their chances of getting a licence to use water.

The following water users must register their water use:

All water users, who do not receive their water from a service provider, local authority, water board, irrigation board, government water scheme or other bulk supplier and who are using water for:

- Irrigation
- Mining purposes
- Industrial use
- Feedlots, or
- In terms of a General Authorisation.

This covers the use of surface and ground water.

Other uses which must be registered include:

- Diversion of rivers and streams
- Storage. Any person or body storing water for any purpose (including irrigation, domestic supply, industrial use, mining, aqua culture, fishing, water sport, aesthetic value, gardening, landscaping, golfing, etc.) from surface runoff, groundwater or fountain flow in excess of 10 000 cubic meters or where the water area at full supply level exceeds 1 hectare in total on land owned or occupied by that person or body and not in possession of a permit or permission.
- Stream flow reduction activities (Afforestation). All afforestation (tree planting) for commercial purposes, including communal forestry for commercial gain, that took place prior to 1972, must be registered.
- Local authorities and other bulk suppliers with their own water sources and purification works.
- Controlled Activities, such as irrigating with waste, power generation with water, atmospheric modification or recharging an aquifer.
- Discharges of waste or water containing waste in terms of section 21 of the National water Act:
 - o Section 21(e) – engaging in a controlled activity defined as such in Section 37(1), with specific reference to irrigation of any land with waste or water containing waste generated through any industrial activity or by a water work.

- o Section 21(f) – discharging waste or water containing waste into a water resource through a pipe, canal or other conduit.
- o Section 21(g) – disposing of waste in a manner which may detrimentally impact on a water resource.
- o Section 21(h) – disposing in any manner of water which contains waste from, or which has been heated in, any industrial or power generation process.
- o Section 21(j) – removing, discharging or disposing of water found underground if it is necessary for the efficient continuation of an activity or for the safety of people.

The above waste water uses include a number of non-point sources of discharge:

- Disposal of effluent to land or to a facility (such as a tailings dam, irrigated effluent or evaporation ponds treatments).
- Disposal of effluent to land or to a facility (such as a landfill, waste rock dumps, fly ash disposal or solid waste disposal).
- Land use activities such as confined animal facilities or dirty water systems.¹⁹⁶

2.5.4. Registering a Tourism SME

2.5.4.1. General Requirements

The average tourism firm spends more on sector-specific regulatory costs than does any other type of firm: three times as much as those in the rest of the economy. Tourism SMEs with between 5 and 10 employees report exceptionally high sector-specific regulatory costs, as do fairly large tourism firms.¹⁹⁷

This being said, there is only a few compulsory national sector-specific regulations that apply to tourism SMEs strictly in their capacity as tourism firms. These stipulations are the 2001 Regulations issued under the Tourism Act, 1993, as amended, 2000. These regulations are relatively challenging. Registration as a tour guide is conditional upon formal proof of competence, which in turn requires tour guides to have a valid heavy vehicle license and to have undergone often rather rigorous, province-specific training, accredited by the Tourism, Hospitality and Sport Education and Training Authority (THETA). Provincial tourism authorities have been created under provincial tourism Acts, requiring that tourism firms within their jurisdiction be registered with the provincial tourism authority. In the case of the Free State, Tourism firms should register with the Free State Tourism Authority as per the Free State Tourism Authority Act No. 3 of 2005.¹⁹⁸

¹⁹⁶ Dept of Water Affairs

¹⁹⁷ *The impacts of sector-specific policies and regulations on the growth of SMEs in 8 sectors of the South African economy. 2005. SBP.*

¹⁹⁸ Ibid.

Tourism firms are also subject to several important, although not strictly compulsory, regulatory requirements. These include membership of the grading scheme run by the Tourism Grading Council of South Africa (TGCSA); administering and paying over the 1% voluntary¹² levy on tourists to the Tourism Business Council of South Africa (TBCSA) to fund international marketing; and, where relevant, maintaining membership of industry associations such as the Southern Africa Tourism Services Association (SATSA) and the Association of South African Travel Agents (ASATA).

An explanation for this relatively high pattern of costs as per the introductory paragraph is that in the ordinary course of their business, tourism firms tend to engage in a wide range of highly regulated activities, such as transport, catering and foreign exchange transactions, which are not strictly sector specific but which entail significant regulatory costs. From the perspective of tourism firms, these regulations are perceived as sector-specific because they are an integral part of the everyday business of the tourism firm.

2.5.4.2. Insurance

Insurance is essential for any tourism business. Besides insuring the property owned by the business (i.e.: vehicles, office contents, etc.), there are three main types of tourism insurance:

- General Public Liability Insurance:

This type of insurance covers liability against potential injury inflicted on other persons, including guests, or damage to their property while in the facility's care or on the premises as a result of proven negligence (e.g. someone falls and injures themselves due to a wet floor; or someone on tour gets food poisoning from a restaurant that the tour guide took them to).

- Passenger Liability Insurance:

This covers liability against potential injury in the event of an accident when transporting passengers (applicable to land, sea and air transport). The amount of cover usually depends on the size of the vehicle, and can include road-side assistance, hire of another vehicle, etc.

- Professional Indemnity Insurance:

This type of insurance indemnifies the Insured against all sums which the insured may become legally liable to pay arising from any claims made by a customer as a result of neglect, error or omission and/or breach of contract in the conduct of the Insured's business and to include costs and expenses in the investigation, defence or settlement of any claim.¹⁹⁹

¹⁹⁹Starting a Tourism Business. 2005 SATSA

2.5.4.3. *The Sectoral Determination for the Hospitality Industry*

The Sectoral Determination looks after the rights of employees in the hospitality industry with regards to minimum wage, etc. For establishments with fewer than 10 employees the minimum wage is R1480 per month (R341-60 per week). Where more than 10 employees are employed, the minimum wage is R1650 per month (R380-80 per week). The parties may, however, enter into a written agreement that the employee be paid an hourly rate. The parties may also agree in writing that the employee be paid on a commission basis, but the employer may not pay the employee less than the prescribed minimum wage for the period worked.

2.5.4.4. *Acts that apply to the hospitality industry*

i. Occupational Health and Safety Act and Compensation for Occupational Injuries and Deceases Act

Please refer to sections 2.3.2.1. and 2.3.2.2. of the document for details regarding the regulatory framework for health and safety and the compensation fund.

ii. Employment Equity Act

This Act aims to promote and achieve equity in the workplace, by encouraging equal opportunity among all workers. The provisions for affirmative action apply to:

- Employers with 50 or more workers, or whose annual income is more than the amount specified in Schedule 4 of the Act
- Municipalities
- Organs of State
- Employers ordered to comply by a bargaining council agreement
- Any employers who volunteer to comply²⁰⁰

2.5.4.5. *Tourism Bargaining Councils*

Trade unions and employers' organisations may form bargaining councils. These deal with collective agreements, solve labour disputes, establish various schemes and make proposals on labour policies and laws.

The following bargaining councils pertain specifically to the hospitality industry:

i. The Tearoom, Restaurant & Catering Bargaining Council

This Bargaining Council has three representative organisations, which negotiate on behalf of their members. These organisations are:

- o Professional Caterers Association
- o SA Commercial, Catering & Allied Workers Union (SACCAWU)

²⁰⁰ Compliance In The Hospitality Industry: Sme Toolkit

- o Care Centre, Catering, Retail & Allied Workers Union (CCRAWUSA)

ii. The Restaurant, Catering & Allied Bargaining Council

This Bargaining Council has five representative organisations that negotiate on behalf of their members.

- o The Restaurant & Food Services Association of SA (CATRA)
- o SA Commercial, Catering & Allied Workers Union (SACCAWU)
- o Distributive, Catering, Hotels & Allied Workers Union (DCHAWU)
- o Hotel, Liquor, Catering, Commercial & Allied Workers Union (HOTELLICA)
- o SA Workers Organisation (SAWO)²⁰¹

2.5.4.6. Starting a Travel Agency

A travel Agency makes arrangements for accommodation, transport, tours and excursions, as well as the selling of air travel tickets. If a tourism entrepreneur does not wish to be involved in the sale of air tickets, but wishes to make arrangements for clients in terms of accommodation, transport and excursions, the International Air Travel Association (IATA) Diploma is not compulsory. However, it has become a benchmark for quality training in the travel industry, and would provide the travel agency with a mark of integrity and credibility which is critical in the early years.

If, however, a business owner wishes to be involved in the sale of air tickets, he/she must be registered with IATA which requires the completion of an IATA/UFTAA (universal air travel) Standard Diploma. He/she also needs to register with a recognised educational institution (e.g. Damelin) in order to complete this diploma. The course is offered on a part-time basis to individuals with a Grade 12 (Standard 10) education, preferably with travel industry experience. The IATA/UFTAA Diploma will provide a broad understanding of travel agency and airline operations, and enable the student to advise clients, make appropriate travel arrangements and reservations, calculate airfares, and complete international travel documents in accordance with IATA rules and procedures.

In addition, every IATA Travel Agency is required to have a qualified BSPZA (Billings and Settlement Plan Southern Africa) consultant in the office at all times. BSP is the standardised accounting function for IATA accredited travel agents, controlled by IATA. All travel agents should understand the BSP function in terms of ticketing and airline accounting, including information on cancellations, refunds, etc.

²⁰¹ Compliance in the Hospitality Industry: SME Toolkit

There are a number of other useful travel-related courses (e.g. Galileo certificate, SAA Fares and Ticketing, British Airways Level 1, etc.) available at various educational institutions (e.g. Damelin, Varsity College, DIT), which should be explored according to the business operator's needs. These are available on a part-time basis, or as part of a one year, full-time Diploma in Travel and Tourism.²⁰²

2.5.4.7. Travel Agents Code of Conduct

The Business Practices Committee, which is part of the Consumer Council, has published a Consumer Code for Travel Agencies which governs the conduct of travel agencies and protects the consumers. When complaints are directed to it, the Business Practices Committee assesses whether harmful business practices were conducted, irrespective of whether the travel agent is a member of the Association of South African Travel Agents (ASATA). In this respect, the Code is more than a voluntary code of conduct, although membership of ASATA is voluntary.

The Code has three main benefits: Firstly, it informs customers about what standard of service to expect, what recourse there is in the event of dissatisfaction and what their legal standing is when dealing with travel agencies, whether the latter are members of ASATA or not. Secondly, it assists travel agents, whether they are members of ASATA or not, to meet desirable levels of business practice by providing the criteria that are broadly acceptable within the industry. Thirdly, it sets a standard of service, professionalism and business practice for all travel agencies in South Africa. Copies of the Consumer Code for Travel Agencies can be obtained from ASATA or the Business Practices Committee.²⁰³

2.5.4.8. Land and planning issues

(a) Space and Infrastructure

Sufficient space is needed where the public can sit and discuss their needs with the travel consultant. Access to basic office infrastructure is needed, including access to electricity, telephones, fax and email. Access to quite expensive computer equipment and software is required if the travel consultant is to be involved in the booking of air tickets. Registration with IATA will allow the keeping of airline ticket stock and the use of a ticket printer. The operational costs of an IATA registered travel agency are therefore likely to be higher than a business which is not registered.

²⁰² How to Establish a Tour Operating Business. Tourism KZN

²⁰³ How to Establish a Tour Operating Business. Tourism KZN

(b) Land Use Zoning

Prospective travel agents should approach the Local Municipality to establish whether the Town Planning Scheme permits the activity on the site chosen.

(c) Amenity Value

An attractive or appealing tourism office environment may be created with posters and maps and will be supported by being located in attractive, clean and well-kept surroundings.

(d) Accessibility / Roads

The site should be easy to find for those people using their own or public transport. The Local Municipality has control over the erection of any signs. If new access onto streets is needed, the Local Municipality will usually construct them, at the cost of the developer. Permission must be obtained from the Provincial Department of Transport to construct new access points onto main roads outside of Local Municipality areas.

(e) Licensing and Registration

The Local Municipality must be contacted in order to register the business. If the agency will be involved in the sale of air tickets, it must be registered with IATA. Compliance with the Consumer Code for Travel Agencies is necessary (Business Practices Committee) and membership of ASATA is desirable.

(f) Regulations and By-Laws

The application for a trading license will be circulated by the Local Municipality to the Health, Fire and Building inspectors, the Town Planning Department. These bodies will ensure that plans comply with their regulations before the application can be approved.

(g) Other Legal Requirements

Should the agency want to erect a road sign in the road reserve area (as distinct from on the agency's own property) for the purpose of advertising, the business approval must be obtained from the Department of Transport in the case of national roads or the Facility Signs Committee in the Provincial Department of Transport in the case of secondary roads or the Local Municipal Engineer in the case of local roads within a Local Municipality area.

(h) Policy

The Department of Arts, Culture and Tourism should be consulted for updates on policy affecting the tourism sector. If there are queries arising from the changes in District and Local Municipality boundaries, the Local or District Municipality should be contacted for assistance.

(i) Structure of the Business

The agency may be registered as a Sole Proprietor, or the business may be registered as a Private Company (Propriety Limited or (Pty) Ltd Company). Chambers of Commerce are good contacts through which to obtain details of organisations that can give advice on the structuring of the business. Advice may also be obtained from Business Advice Centres. The Bloemfontein Chamber of Commerce may assist in these circumstances.²⁰⁴

2.5.4.9. Tour operator registration

A tour operator provides tourists the opportunity to view natural, historical or culturally significant sites at close proximity, while providing salient information on these sites. A knowledgeable tour guide greatly enhances the tourism experience for any visitor, providing insights which may not be obtainable by any other means. The hands-on experience and personal interaction with the traveller of a tour guide is a valuable asset to any tourism operation.

(a) Main requirements

There are some requirements for becoming a tour operator, as set out by the Operating License Board, which must be met in order for an individual to operate as one. These include:

- In order to carry fare-paying passengers (i.e. tourists), a vehicle must be registered with the Operating License Board which will issue an Operating license. Applicants are normally required to specify that they will be carrying tourists and should also specify the intended routes. Application should be made to the local Operating License Board for the license. One may prepare the application oneself, or use the services of a lawyer specialising in these licenses. There is a cost implication for the license application itself.
- All enquiries regarding license applications should be directed to the local Operating License Board.
- A driver of tourists must have a Professional Driving Permit (PrDP). This is issued by the Traffic department based on a normal driving license & the applicant is subject to a medical examination & a check for any criminal convictions. There is a cost involved in applying for a PrDP. In the Free State, the cost is a R75 booking fee and a R186 issue fee.

²⁰⁴ How to Establish a Tour Operating Business. Tourism KZN

- Any operator providing a guided tour is required to use a Tourist Guide who is qualified & DEAT/ FGASA accredited. It is illegal to guide a tour without the necessary qualification.
- Tourists who self-drive do not require a qualified Tourist Guide .
- Passenger Liability Insurance cover should be in place. (SATSA recommends a minimum of R5 million for a vehicle carrying 5 – 7 passengers)The policy should be in the name of the company and the cover is applicable to each vehicle.
- The recommended cover for vehicles carrying more than 7 passengers is to calculate the cover based on $\pm$ R1 million per passenger.

(b) Issuance of a PrDP licence²⁰⁵

To drive on a public road transporting goods, dangerous goods or passengers for an income in South Africa, an individual must have a professional driving permit (PrDP). The permit is issued in addition to an ordinary driving licence.

A PrDP applies to the following motor vehicle categories:

- a goods vehicle with a gross vehicle mass exceeding 3 500kg
- a breakdown vehicle or a bus
- a minibus weighing more than 3 500kg or designed to carry 12 or more people (the driver included)
- light motor vehicles, indicated in the economic sector for carrying passengers for reward (taxi-cab)
- a motor vehicle designed to carry 12 or more people
- any vehicle for which an operating licence is issued
- dangerous goods vehicle (e.g. fuel tanker, etc.).

Age restrictions for the motor vehicle categories are as follows:

- For a goods vehicle, the applicant should be 18 years or older.
- For a passenger vehicle, the applicant should be 21 years or older.
- For dangerous goods vehicles, the applicant should be 25 years or older.

A person can only obtain a PrDP if he/she adheres to the following requirements:

- The person has a valid driving licence for the type of vehicle in question
- The person has been certified as medically fit by a doctor
- The person has been certified by an approved training body (only required for category D (dangerous goods) vehicles)

²⁰⁵South African Government Services

- He/she does not have any criminal record against his/her name for the past five years as follows:
 - o driving a motor vehicle while under the influence of intoxicating liquor or a drug having a narcotic effect
 - o driving a motor vehicle while the concentration of alcohol in his or her blood or breath exceeded a statutory limitation
 - o in the case of an application for a category P and D permit, an offence of which violence was an element
 - o has never had his/her driving licence suspended
 - o has never been convicted of a criminal offence or paid an admission of guilt fine.

As the operator or owner of the motor vehicle for which a PrDP is required, the driver may not let another person drive the vehicle on a public road, unless they have a valid PrDP for the appropriate category.

(c) Registration with Provincial Registrar for Tour Guides

According to the Tourism Second Amendment Act (No. 70 of 2000), any person who wishes to be registered as a tourist guide must apply to the Provincial Registrar for registration. The application form must be accompanied by the following supportive documents:

- A signed code of conduct
- 4 ID sized photos
- Registration fee of R240, as well as:
- Certified copies of the following;
 - o A valid SA Identity document (if not SA citizen: passport and valid permit)
 - o THETA Assessment certificate
 - o Valid First Aid Certificate/ Nursing Certificate
 - o Other documents, including a driver's license and / or PDrP where applicable
 - o Upon registration, the tourist guide will receive a badge and an ID card. The ID card will indicate which province, region or area the tourist guide is allowed to operate in, as well as his/her period of registration.
- Any person registered as tourist guide may, before the end of the period for which he or she has been registered, apply to the Provincial Registrar for the renewal of his or her registration and his or her registration shall, upon the payment of R240 be renewed.
- A person applying must be fluent in English. Note however that the more international languages spoken, the more work will be available.

(d) Categories of Tour Operators

There are three categories of tour operator. These include:

- In-bound tour operators: these operators provide services mainly for foreign visitors to South Africa;
- Out-bound tour operators: these operators provide services to clients in South Africa wishing to travel to destinations outside the country;
- Local tour operators, who provide services to domestic clients for tours within South Africa.²⁰⁶

(e) Land Use Zoning

Tour guides should contact the Local Municipality where they wish to operate in order to establish whether the Town Planning Scheme permits the tourism activity on the site chosen.

(f) Licensing and Registration

A tour operator may not drive his/her own vehicle (acting as a courier with paying guests) without being registered as a tourist guide. In order to operate as a tourist guide, application must be made to the Free State Department of Tourism to register.

(g) Road Transportation Permit (TV3/I Form)

Many tourist guides may also wish to run their own tour operation in which they are both tour guide and tour operator. They must take note of the following legal requirements:

- Every vehicle that is to carry passengers for reward (i.e. paying passengers) shall have its own Road Transportation Permit.
- Application should be made to the Local Transportation Board for the permit. It is very important to be quite clear on the fact that the tour guide will be transporting tourists and to mark clearly the routes that will be used. If the guide does not wish to prepare his/her own application he/she may use the services of a road transport specialist lawyer, with usual lawyer rates involved. The Southern African Tourism Services Association (SATSA) does not provide assistance in this process.

Once completed, the forms must be submitted together with a fee and a letter of approval from the local Town Planning Department to the Road Transportation Board, and the proposed travel routes are gazetted together with details of the application. After the application has been gazetted and the

²⁰⁶ How to Establish a Tour Operating Business. Tourism KZN

period for objections has elapsed, the applicant will be called to a sitting of the Board where the application and any objections will be heard. The Board will subsequently make its decision which will be communicated to the applicant or his/her representative. At the hearing the applicant may attend in person or may appoint a representative. Note that this procedure can take 3-6 months.

(h) Regulations and By-Laws

An application for a trading license will be circulated by the Local Council to the Health, Fire and Building inspectors, the Town Planning Department, and in some cases the Development Services Board (DSB). These bodies will ensure that the plans comply with their regulations before the application can be approved.

(i) Guide education

If a person wants to register as a regional or national guide he/she needs, as a minimum, the NQF4 qualification (Matric/ Grade 12) plus the required unit standards for the area of specialization.²⁰⁷

Some of the suggested options to becoming a successful tour guide are:

- The individual should attend the required courses with a training institution approved by DEAT and venture to become accredited for as many regions (provinces) as possible. To become a "national" guide requires accreditation in all nine provinces. Examples of available courses are:
 - o Module 1. General introduction to tourist guiding.
 - o Module 2. Theoretical and practical knowledge relating to tourist guiding in a specific area within a region.
 - o Module 3. General introduction to tourist guiding for specialised tourist guides.
 - o Module 4. Theoretical and practical knowledge relating to tourist guiding in a specific region.
- Specialised tourist guiding includes field guiding e.g. walking trails and open 4X4 vehicles at lodges and in the Kruger Park. In this case, the guide should contact the Field Guides Association of Southern Africa for their requirements and a list of accredited trainers.²⁰⁸

²⁰⁷ How to Become a Tourist Guide. Free State Tourism

²⁰⁸ How to Become a Tourist Guide. Free State Tourism

2.5.4.10. *Registering a Bed and Breakfast or Guest House*²⁰⁹

(a) Establishing the business format

A bed and breakfast or guesthouse can be run as a sole proprietor or in partnership with a spouse. However there are some advantages that come with trading through a company, the main one being able to limit personal liability in the event of some disaster affecting the business. However, this comes at a cost, as the business operator will need to appoint an auditor (in the case of a company) or an accounting officer (in the case of a close corporation) who will sign off a set of financial statements that the operator will have to produce. He/she will be obliged to keep accounting and statutory records in each case that comply with the legislation governing these two entities. Usually the auditor or accounting officer will assist the operator to ensure that the requirements are met for a fee.

(b) Tax

A company must register with SARS and submit a tax return annually together with provisional tax returns twice a year. If a person conducts the business in his/her personal capacity or in partnership, he/she will also have to register as a taxpayer if they are not one already, and submit details of all income and expenditure to SARS annually. The business only needs to register with SARS for VAT if the annual turnover exceeds R300 000, in which case it will be obliged to add VAT to guest's bills, and pay this VAT over to SARS. However, the business operator will be able to deduct any VAT that has been paid on any purchases made, from his/her payment to SARS.

(c) Employment

If the operator employs any staff to assist in the venture, he/she will need to comply with the Basic Conditions of Employment Act. This means providing staff with a formal letter of appointment/contract and providing them with the benefits they are entitled to in terms of this Act. The business operator will also have to register with SARS as an employer for PAYE purposes, deduct PAYE from the remuneration paid to staff, and submit a monthly return to SARS together with payment of the PAYE deducted. In addition, he/she will have to register as an employer and each employee with the Department of Labour and submit to them a monthly return together with payment of the statutory contributions into the Unemployment Insurance Fund.

²⁰⁹Setting up a Bed and Breakfast in SA. D. J Phillips

There is a requirement to register the business with the Workman's Compensation Commissioner and pay across an insurance premium to protect the business from any claim employees may have should they have an injury arising from an accident whilst on duty.

(d) Grading

Grading of a bed and breakfast is not compulsory, but it is recommended (particularly for accommodation establishments). Restaurants can also be graded, and there is a plan for Tour Operator's vehicles to be graded. Grading is done by a physical inspection of facilities yearly, which must be conducted by an accredited grading assessor from the Tourism Grading Council of South Africa (TGCSA).

(e) Requirements for premises

There are certain requirements for bed and breakfast and guesthouse establishments as set out in the Bed and Breakfast and Guest House Bylaw, 2011 of the Free State.

The stipulations are as follows:

- No person may operate a bed and breakfast or a guest house facility on any premises unless he or she has complied with all applicable legislation, including -
 - a. the National Building Regulations and Building Standards Act, 1977 (Act No. 103 of 1977) where all buildings constructed on the premises must comply with this Act and its regulations;
 - b. the Council's applicable Town Planning Scheme with specific reference to parking, floor area ratio, height, coverage and zoning, number of rooms, if prescribed by a Town Planning Scheme applicable to the area where the property is located and with Council's Outdoor Advertising Bylaws with reference to signage.
 - c. the Foodstuffs, Cosmetics and Disinfectants Act, 1972 (Act No. 54 of 1972) and the Regulations governing general hygiene requirements for food premises and the transport of food, formulated under the Health Act, 1977 (Act No. 63 of 1977), where a Certificate of Acceptability must be obtained from the Council's Senior Health Inspector.
 - d. the Broadcasting Act, 1999 (Act No. 4 of 1999) if the lettable room is supplied with a television set;
 - e. the South African Music Rights Organisation (SAMRO) where a license is required if background music is to be played to the guests;
 - f. the Free State Gambling and Liquor Act, 2010, (Act No. 6 of 2010) if liquor, including complimentary drinks, are served to guests;

- g. the Tobacco Products Control Act, 1993 (Act No. 83 of 1993) where it is a requirement that signs are displayed in areas designated for smoking and no -smoking signs are displayed elsewhere.

The premises must provide the following amenities:

- access to bedrooms and bathrooms at all times for registered guests;
- a serviceable lock and key (for privacy) to each lettable room;
- an area where breakfast can be served, adequate for the use of, and easily accessible to any guest on the premises;
- a bathroom and toilet for each lettable room suitably placed in a separate compartment which is close to the lettable room and is easily accessible to the guest/s of a lettable room and separate to that of the owner of the facility;
- no kitchen facility may be provided to guests in the lettable rooms;
- The operation of the facility may not detract from the residential character and amenities of the property or the immediate surroundings. The facility must be of such a nature that the predominant land use is retained and if in a residential area, the residential character of the house is retained.
- The facility may not include a place of public assembly or a place of public amusement.²¹⁰

(f) **Special consent and business license required to operate a bed and breakfast or guest house facility:**

A person who wants to operate a bed and breakfast or guest house facility must apply to the Council in writing in the prescribed format for Council's special consent. When the Council receives an application for such special consent and, before deciding whether or not to approve the application, the Council may have the following requirements:

- It may request the applicant to provide any further information which the Council considers relevant to enable it to make an informed decision;
- The Council will take into consideration the following factors:
 - o the scale and size of the proposed establishment in relation to character of the area;
 - o whether the premises are suitable for the proposed use;
 - o whether there is sufficient on-site parking facilities for motor vehicle and
 - o any other matter which would, in its opinion, interfere with the amenities and character of the neighbourhood; and

²¹⁰ Free State Bed and Breakfast and Guest House Bylaw, 2011

- The Council must ensure that the relevant premises are inspected by authorised officials as soon as reasonably possible.
- The Council may also do the following:
 - o approve the application for special consent subject to such terms and conditions that are reasonably aimed at eliminating or reducing the risk, if any, which is likely to be caused by the relevant activity; or
 - o refuse the application for special consent.
- The applicant must also apply for and obtain a Business License from the Licensing Authority for the area in which the facility is located.

A person who operates a bed and breakfast or guest house facility is required to abide by the following regulations:

- The individual must be resident on the property;
- The person must abide by all relevant health, fire, business, labour, town planning and media laws and regulations;
- The person must ensure that the application for Council's special consent to operate a bed and breakfast or guest house facility is accompanied by letters of consent from the registered owners of the adjoining properties;
- He/she must keep all sanitary, ablution and water supply fittings in good working order;
- He/she is obliged to keep the premises and all furniture, fittings, appliances, equipment, containers, curtains, covers, hangings and other soft furnishings, table linen, bed linen and cloths of whatever nature used in connection with the facility in a clean, hygienic and good condition at all times by:
 - supplying fresh linen and unused soap for each letting; and
 - taking adequate measures to eradicate pests on the premises.

(g) Liquor License

The Free State Liquor regulations of 2010 regulates the trade and selling of alcohol in the Province. Any establishment wishing to sell liquor must apply for a liquor licence. A guest house pays R 1750 for such a Liquor licence. The annual registration fees are R 5000 per annum for a guest house. The Act also sets out the business hours, during which liquor may be sold, for example, 10:00 am to 00:00 for a guest house.²¹¹

²¹¹Free State Liquor Regulations. 2010.

2.5.5. Registering a construction business

2.5.5.1. *Definition*

Construction works may be defined as everything that is constructed or results from construction operations. Construction works also need to be maintained so that they continue to serve the purpose for which they were constructed.

2.5.5.2. *Employer Definition*

Clients often do not possess the expertise or resources to design and construct construction works. They contract or employ businesses to do so in which case they are often referred to as “employers”.

In the “design by employer” contracting strategy, the employer appoints consultants (design professionals) to design the works and a contractor to construct the works designed by the appointed consultants. The consultant is also required to confirm that the contractor constructs the works according to the requirements of the consultant's design.

In the “design and build” contracting strategy, the client appoints a contractor to both design and build the works. The contractor usually appoints a consultant to design the works for him.

The “design by employer” contracting strategy is the most popular approach in South Africa for providing construction works.

2.5.5.3. *Typical Construction Team structure*

A typical construction team includes the following members:

- An architect
- An engineer (civil, structural, electrical, mechanical)
- A Quantity Surveyor
- A Project Manager

The regular rules and regulations apply to contractors for VAT in the construction sector. A brief note on the calculation of VAT for construction is the point that construction works' project values are added to the purchases of materials, hire of equipment etc., which have been bought for the works. If the construction works contract is worth R100 000 (excluding VAT) then the VAT that the employer will be charged is R14 000 (14% of R100 000). This R14 000 is held by the contractor on behalf of SARS until the due date for payment. This tax is known as the “output tax.” Before paying the tax to SARS, the contractor is allowed to deduct from this amount, the amount of VAT

that is paid to VAT vendors in purchases of materials, hire of equipment etc. This tax is known as input tax.²¹²

2.5.5.4. *The Construction Registers Service*²¹³

The Construction Registers Service comprises the Register of Contractors and the Register of Projects which have been established in terms of the CIDB(Construction Industry Development Board) Act (Act 38 of 2000). The Register of Contractors grades and categorises contractors according to financial and works capability. It is mandatory for public sector clients to apply the Register of Contractors when considering construction works tenders. The Register of Contractors facilitates public sector procurement and serves as a framework for contractor development.

The Register of Projects gathers information on the nature, value and distribution of projects. When clients register projects, the track records of contractors are updated and the information is available to other clients through the CIDB website. Public sector clients are required to register projects above R200,000, while private sector clients and large state owned entities are required to register projects above R10 million.

The Register grades and categorizes contractors according to their works and financial capability. Contractors must register with the CIDB in order to be awarded a construction works contract within the public sector. All applications for registration must be made on registration form CRS F006, except where contractors wish to register in contractor grade 1 by making application at a Construction Contact Centre. The form must be completed in full and sent to the CIDB together with all the required supporting documents. Application forms can be sent by post or fax to the CIDB.

Applications must be accompanied by proof of payment of the administration (all grades) and annual fees (only grades 2 and higher). A contractor applying for more than one grade in grades 2 to 9 only needs to pay annual fees for the highest grade.

There are 9 grading levels. These indicate the size of contracts a contractor is considered capable of undertaking. This is based on the body of works (general building, civil engineering, electrical engineering, mechanical engineering or a specific category of specialist works) which they consider themselves capable of performing. For example, if a contractor undertakes general building work, an application should be submitted for the general building class of construction works and not the civil engineering or specialist works class. Contractors may register for more than one class of works.

²¹² CMG 101 Contractor Management Guidelines. CIDB

²¹³ Ibid.

The work experience required depends on the grade and class of works a contractor applies for. A contractor, except in the case of an application for grade I, needs to provide proof of annual turnover and available finance, as well as proof of contracts previously completed.

Newly established businesses are assessed on the amount of working capital that they can muster to sustain a contract. No financial or works capability requirements apply to the entry level, i.e. in contractor grading designation one.

The CIDB recognizes home builders who register with the NHBRC. Home builders do not need to register with the CIDB, unless they also wish to tender for other kinds of public sector construction work. Contractors who are provided with the bulk of construction material by the client need not register with the CIDB. Any construction project that relates only to the provision of homes as contemplated in the Housing Consumer Protection Measures Act 95 of 1998, is exempt from these regulations.

It is worth noting that the CIDB does not award tenders for projects and it does not evaluate tenders on behalf of clients. Being registered does not guarantee the award of a contractor. Furthermore, there is no need to register a once-off joint venture (JV). However, each partner to the JV must be registered separately.

In terms of projects to be registered, any construction works contract which exceeds the following values, including VAT must register:

- Public sector: R 200 000
- Private sector: R 10 000 000

Public sector and private sector employers must register contracts within one month and three months, respectively, from the date on which the contractor's offer to perform a construction works contract is accepted in writing. Construction businesses are required to abide by a code of conduct and are registered for a period of three years.

Table 2.6- Fees for all grades of Construction

Grade	Maximum Contract Value for each Grade	Administration fee	Annual Fee
1	R200 000	R450	Not applicable
2	R500 000	R250	R250
3	R1 500 000	R750	R300
4	R3 000 000	R750	R800
5	R5 000 000	R750	R1 500
6	R10 000 000	R750	R3 000
7	R30 000 000	R750	R8 000
8	R100 000 000	R750	R25 000
9	Greater than R 100 000 000	R750	R40 000

(Source: CIDB Inbrief Information, 2008)

Construction businesses are not permitted by law to contract with any client if they:

- Are not in good standing with the Compensation Fund or with a licensed compensation insurer (Federated Employers Mutual Assurance (FEM) for the building industry).
- Cannot reasonably satisfy the client that they have the necessary competencies and resources to carry out the work safely.
- Wish to construct a house and they are not registered as a home builder with the National Home Builders Registration Council.²¹⁴

The law furthermore prohibits a government department, a provincial department, a municipality or a state owned enterprise from entering into a contract with a construction business to undertake construction works if that business:

- Is not registered with the Construction Industry Development Board.

²¹⁴ CMG 101 Contractor Management Guidelines. CIDB

- Is not in possession of a Tax Clearance Certificate of Good Standing issued by the South African Revenue Services (SARS). SARS will only issue a business with a Tax Clearance Certificate if the business has not contravened the provisions of the Income Tax Act (1962), Employees Tax (PAYE as contained in the Income Tax Act), Skills Development Act (1999) or Unemployment Insurance Contributions Act (2002) as at the date of the certificate. Tax clearance certificates are valid for a period of one year, provided that no taxes, levies or duties become due and outstanding during this period.

2.5.5.5. *Registration as a home builder*

The National Home Builders Registration Council (NHBRC) is a housing consumer protection body created in terms of the Housing Consumers' Protection Measures Act. The Council is mainly established to protect the interest of housing consumers and to regulate the home building industry. Any construction business who builds a home is required by law to register with the NHBRC. Failure to register constitutes an offence and, on conviction, the home builder/developer is liable for a fine of up to R25 000 or a one-year prison term on each charge. Registration requires an application fee of R750 plus R600 initial registration fee and an annual renewal fee of R600. To qualify for registration the home builder must have the required financial, technical, construction and managerial capacity which will be evaluated by the Council. A home builder may be registered provisionally or conditionally and the Council may limit the number of homes that may be enrolled. The status of the home builder is subject to review and change at any time. The registration of a homebuilder remains valid for one year.

Registered home builders are required to:

- Conclude a written agreement for the construction or sale of any new home, which sets out all the material terms including the financial obligations of the housing consumer.
- Enrol homes with the NHBRC at least 15 days before construction begins.
- Construct homes in accordance with the NHBRC's Home Building Manual.
- Respond promptly to complaints notified by the housing consumer or the NHBRC.
- Honour the following deemed warranties in relation to the home that is:
 - o built in a workmanlike manner;
 - o fit for habitation; and
 - o built in accordance with the NHBRC Technical Requirements and the terms, plans and specifications of the agreement.
- Honour the post-occupation warranties to:
 - o rectify any major structural defect caused by non-compliance with the NHBRC Technical Requirements notified to him within a period of not more than five years;

- repair any roof leak attributable to the workmanship, design or material occurring and notified to him within a period of not more than one year; and
- rectify any non-compliance with the terms, plans and specifications of the agreement or any deficiency related to design, workmanship or material occurring and notified to him within a period of not more than three months.²¹⁵

The NHBRC may suspend a home builder's registration or its rights to enrol a home where it has information that the home builder has failed to comply with the Act. Only prime or main contractors must be registered with the CIDB. Subcontractors need not be registered. So-called Labour-only contractors and those contractors who are provided with the bulk of the materials required for construction works by the employer or an agent of the employer need not to register either. Once-off joint ventures do not have to register, provided that each partner of the joint venture is separately registered.²¹⁶

2.5.5.6. *Best Practice Contractor Recognition Scheme*

The Construction Industry Development Board Act (Act 38 of 2000) requires the Board to establish a Best Practice Contractor Recognition Scheme which:

- enables organs of state to manage risk on complex contracting strategies; and
- promotes contractor development in relation to best practice standards and guidelines developed by the Board.

The CIDB Best Practice Contractor Recognition Scheme achieves this through:

- recognising the competence of contractors;
- encouraging best practice and performance improvement of contractors; and
- providing a platform for clients to reward best practice and performance improvement.

The key competencies required by an enterprise to run a successful contracting business include:

- business management;
- building and construction works management (operational and supervision);
- building and construction technology; and
- legislative issues.

In a small company, these competencies may all be held by a single person, but in general, these competencies are held by different people, with the owner (or CEO) providing overall management control.²¹⁷

²¹⁵ CMG 101 Contractor Management Guidelines. CIDB

²¹⁶ Ibid.

²¹⁷ Best Practice Contractor Recognition Scheme Contractor Competence Accreditation. CIDB.

At present, accreditation is being limited to General Building (GB), Civil Engineering (CE) and selected artisanal categories within the Special Works (SW) and in the following Categories within a Class of Works:

- Limited (Grades 2 to 6): being a contractor who has adequate knowledge and experience to carry out work within the sub-categories described in the certificate of accreditation;
- Trade Contractors (Grades 1 to 5): being a contractor who has adequate knowledge and experience to carry out work within the trade categories described in the record of accreditation.

The scope of work associated with the various sub-Categories that will be accredited within the Limited Category for various Classes of Construction Works are summarised below:

i. General Building and Civil Engineering

- Low rise residential building of not more than 16metres in height;
- Low rise commercial, institutional and industrialbuildings with public access and exit requirements
- Single family houses
- Municipal services (water, sewer, roads and stormwater)
- Major roads, storm-water and earthworks
- Bridges, culverts, small dams and canals
- Water reticulation and treatment works
- Pump stations and pipelines
- Sewerage reticulation and treatment works
- Solid waste disposal sites
- Marine and dredging works
- Rehabilitation and maintenance

ii. Building Trade Contractors Civil Trade Contractors

- Bricklayers and stonemasons
- Plumbers and drainage systems
- Carpenters and joiners
- Ceiling and partitioning
- Shop fitters
- Floor finishers and painters
- Glaziers, plasterers and tillers

- Electrical works
- Block working
- Roofing contractors
- Structural Steel Workers
- Earthmoving Plant Operators
- Crane, Hoist and Lift Operators
- Concreters
- Formwork
- Steel fixing
- Kerb laying
- Road marking
- Block paving
- Pipe laying
- Minor structures
- Demolition²¹⁸

The required documentation is a completed application to the CIDB, (Form CRSF101), providing full details of the qualifications and experience that is relevant to assessing the contractor's knowledge, skills and experience in the Categories and sub-Categories being applied for. The contractor's application must be accompanied by proof of payment of the necessary application fees prescribed by the CIDB. Where a contractor or his nominated representative does not hold the required minimum formal qualifications, the contractor can request an external assessment of the contractor's or of his nominated representative's competence.

Trade Contractors will receive automatic accreditation if they are registered with a professional or industry association that has a recognition agreement with the CIDB, and where the contractor has met:

- the registration requirements of the professional or industry association; and
- the contractor is registered with the CIDB Register of Contractors. Contractors must submit such applications to the CIDB using the relevant form (Form CRSF103).²¹⁹

A contractor's competence accreditation is valid for a period of three years, and a request for renewal must be made on the relevant form (Form CRSF101). A contractor's accreditation may be

²¹⁸ Best Practice Contractor Recognition Scheme Contractor Competence Accreditation. CIDB.

²¹⁹ Best Practice Contractor Recognition Scheme Contractor Competence Accreditation. CIDB.

transferred to that of another entity and treated as if it were the same entity for the purposes of accreditation where:

- a sole proprietor becomes a close corporation or a Pty (Ltd);
- a close corporation becomes a Pty (Ltd), or vice versa, without any substantial changes; or
- a company registered in terms of an Act undergoes only a name change for whatever reasons without changing its principals.²²⁰

The following Building Trade Contractors can currently be accredited:

- **Plumbing and Drainage:** Install, maintain and repair pipes, drains, guttering and metal roofing, mechanical services and related equipment for water supply, gas, drainage, sewerage, heating, and cooling and ventilation systems in all classes of buildings and premises, including, but not limited to, the following:
 - general plumbing;
 - air conditioning and mechanical services plumbing;
 - drainage contractors;
 - gas fitting; or
 - roof plumbing.
- **Carpentry and Joiner:** Construct, erect, install, renovate and repair structures and fixtures made of wood, plywood, wallboard and other materials, and cut, shape and fit timber parts to form structures and fittings which would typically include but not limited to, the following:
 - kitchen units;
 - finishing carpenter;
 - joiner wood machinist;
 - form worker; and
 - ceiling and partitioning erector.
- **Bricklayers and Stonemasons:** Lay bricks, pre-cut stones and other types of building blocks in mortar to construct and repair walls, partitions, arches and other structures, and cut and shape hard and soft stone blocks and masonry slabs for the construction and renovation of stone structures and monumental buildings including but not limited to, the following:
 - simple masonry walkway
 - installing an ornate exterior on a high-rise building.
- **Floor Finishers and Painter:** Install and repair soft and resilient floor coverings, and apply paint, varnish, wallpaper and other finishes to protect, maintain and decorate the surfaces of buildings and structures. The scope of work includes and is not limited to the following:
 - carpet layer; and

²²⁰Ibid.

- o parquetry layer.
- Glaziers, Plasterers and Tilers: Cut and install flat glass, apply plaster and secure plasterboard and suspended ceilings, and lay tiles on roofs, walls and floors.²²¹

2.5.5.7. *Occupational Health and Safety Act, 1993 Construction Regulations, 2003*

Below is a summary of the requirements for the construction sector in terms of the Occupational Health and Safety act. This is just a brief outline and contractors should consult the Act to ensure compliance with all necessary regulations.

(a) Notification of construction work

A principal contractor who intends to carry out any construction work has to carry out the following actions:

- Before carrying out that work, notify the provincial director in writing of the construction work if it includes:
 - o the demolition of a structure exceeding a height of 3 metres; or
 - o the use of explosives to perform construction work; or
 - o the dismantling of fixed plant at a height greater than 3m.
- Before carrying out the work, the contractor must notify the provincial director in writing when the construction work:
 - o exceeds 30 days or will involve more than 300 person days of construction work; and
 - o includes excavation work deeper than 1m; or
 - o includes working at a height greater than 3 metres above ground or a landing.
- Every contractor shall appoint a full-time competent employee designated in writing as the construction supervisor, with the duty of supervising the performance of the construction work.²²²

(b) Risk assessment

Every contractor performing construction work needs to, before the commencement of any construction work and during construction work, have a risk assessment conducted by a competent person appointed in writing and the risk assessment should form part of the health and safety plan to be applied on the site. Such a form should include at least:

- the identification of the risks and hazards to which persons may be exposed to;

²²¹ Best Practice Contractor Recognition Scheme Contractor Competence Accreditation. CIDB.

²²² Occupational Health and Safety Act, 1993 Construction Regulations, 2003

- the analysis and evaluation of the risks and hazards identified;
- a documented plan of safe work procedures to mitigate, reduce or control the risks and hazards that have been identified;
- a monitoring plan; and
- a review plan.
- A contractor should ensure that a copy of the risk assessment is available on site for inspection by an inspector, client, client's agent, contractor, employee, representative trade union, health and safety representative or any member of the health and safety committee.²²³

(c) Construction welfare facilities

Apart from the construction site provisions contained in the Facilities Regulations promulgated by Government Notice No. 2362 of 5 October 1990, as amended, a contractor must, depending on the number of workers and the duration of the work, provide at or within reasonable access of every construction site, the following clean and maintained facilities:

- at least one shower facility for every 15 workers;
- at least one sanitary facility for every 30 workers;
- changing facilities for each sex; and
- sheltered eating areas.
- A contractor shall provide reasonable and suitable living accommodation for the workers at construction sites which are remote from their homes and where adequate transportation between the site and their homes, or other suitable living accommodation, is not available.²²⁴

i. Some other stipulations in the Act relate, inter alia, to the following:

- *Excavation work*- the making of any man-made cavity, trench, pit or depression formed by cutting, digging or scooping;
- *Explosive powered tool*- a tool that is activated by an explosive charge and that is used for driving bolts, nails and similar objects for the purpose of providing fixing;
- *Fall prevention equipment*- equipment used to prevent persons from falling from an elevated position, including personal equipment, body harness, body belts, lanyards, lifelines or physical equipment, guardrails, screens, barricades, anchorages or similar equipment;
- *Fall arrest equipment*- equipment used to arrest the person in a fall from an elevated position, including personal equipment, body harness, lanyards, deceleration devices, lifelines or similar equipment, but excludes body belts;

²²³ Occupational Health and Safety Act, 1993 Construction Regulations, 2003

²²⁴ Occupational Health and Safety Act, 1993 Construction Regulations, 2003

- *Fall protection plan*- a documented plan, of all risks relating to working from an elevated position, considering the nature of work undertaken, and setting out the procedures and methods to be applied in order to eliminate the risk;
- *Hazard identification*- the identification and documenting of existing or expected hazards to the health and safety of persons, which are normally associated with the type of construction work being executed or to be executed;
- *Health and safety file*- a file, or other record in permanent form, containing the information required as contemplated in these regulations;
- *Scaffold*-any temporary elevated platform and supporting structure used for providing access to and supporting workmen or materials or both.

(Note: The contractor needs to investigate the Act itself for a comprehensive list of all the regulations)²²⁵

ii. SABS Standards

Some of the salient SABS occupational safety standards a construction business must adhere to and referred to in the Act are:

- SABS 0400- the South African Bureau of Standards, Code of Practice for the application of the National Building Regulations
- SABS EN 1808- the South African Bureau of Standards' Standard Specification entitled: "Safety requirements on suspended access equipment – Design calculations, stability criteria, construction-tests"
- SABS 1903- the South African Bureau of Standards' Standard Front-end Specification entitled: "Safety requirements on suspended access equipment – Design calculations, stability criteria, construction-tests"
- SABS 085- the South African Bureau of Standards' Code of Practice entitled "The Design, Erection, Use and Inspection of Access Scaffolding".²²⁶

2.5.6. Registering a Social Services enterprise

In general, social welfare services focus on meeting the needs of and building on the strengths of individuals, families, communities and other social groups through the provision of a comprehensive range of services and programmes that extend beyond the inherent capacity of individuals and their natural support networks.

²²⁵ Occupational Health and Safety Act, 1993 Construction Regulations, 2003

²²⁶ Occupational Health and Safety Act, 1993 Construction Regulations, 2003

Core services rendered by the social services sector have been grouped into five broad categories:

- Promotion and prevention services
- Rehabilitation services
- Protection services
- Continuing care services
- Mental health and addiction services

(a) Promotion and prevention programmes

Promotion and prevention programmes and services aim to enhance the process whereby people are provided with ways and means of taking greater control of factors that impact on their well-being. These are anticipatory actions to reduce the likelihood of undesirable conditions. Prevention services take into account individual, environmental and societal factors that contribute to problem development.

(b) Protection services

Protection services aim to safeguard the well-being of individuals and families. Protection services are usually provided within the context of a legislative and/or policy framework and include statutory services. These empower designated people or institutions to take specific actions that are deemed necessary to protect the integrity and well-being of the person within the social context of the family and community. Protective services work towards having families, children and individuals living in a safe and nurturing environment where their rights are promoted and their well-being is ensured.

(c) Rehabilitation services

Rehabilitation services are aimed at improving and maintaining the social functioning of clients whose functioning is impaired as a result of injury, disability or any chronic condition. In addition to improving the quality of life of an individual, rehabilitation services are an effective way of reducing the demands on families and publicly funded support systems. Services are provided in a wide range of settings, including the home, service agencies and residential facilities.

(d) Continuing care services

Continuing care services are those services that maintain or improve the physical, social and psychological well-being of individuals who, for a variety of reasons, are not able to care for themselves fully. The goal of continuing care is to improve their independence and quality of life. Continuing care requires a progressive and flexible system that allows people to access all the services that they need. Continuing care services work toward meeting needs in the least intrusive

manner possible, and provide the greatest opportunity for lasting well-being and functional independence.

(e) Mental health and addiction services

These services encompass the area of mental health, addiction and family violence through prevention, treatment and aftercare, delivered as an integrated programme to enable the affected to receive the care and support they need to live optimal lives. These services work towards assisting people to live balanced lives by promoting, protecting and restoring their mental well-being.²²⁷

2.5.6.1. **Non-profit Organisations**

The most popular route taken by communities/ groups and individuals in establishing social services is via registering a Non-profit Organisation (NPO). An NPO is defined, in terms of section 1 of the NPO Act, as a trust, company or other association of persons established for a public purpose and of which its income and property are not distributable to its members or office bearers except as reasonable compensation for services rendered. Nongovernmental organisations (NGOs) and community based organisations (CBOs) are collectively known as non-profit organisations (NPOs). In some instance, NPOs are also referred to as Civil Society Organisations (CSO).

The Register of Non-profit Organisations (NPOs) is a voluntary registration facility that enhances the credibility of the registered NPO as it reports to a public office. The NPO Directorate, as a public office, holds information about registered NPOs for the public to access. This, therefore, increases the transparency and accountability of the organisation beyond its immediate role-plays. This accountability and transparency improves the governance of an organisation as it is also expected that a registered NPO must comply with the requirements of the NPO Act. The NPO registration status is also a funding requirement for most donor and funding agencies. The national NPO registration facility therefore brings NPOs into a public system that allows for information about the sector to be gathered and made publicly available which in many ways increases the confidence of the public in the non-profit sector. Any organisation that is not working for profit and is not part of government can apply for registration.

These are mostly the following:

- Non-Governmental Organisations (NGO)
- Faith Based Organisations (FBO)
- Community Based Organisations (CBO)

²²⁷Service Delivery Model For Developmental Social Welfare Services. Dept of Social Development

- Trusts that have registered with Master of the Supreme Court under the Trust Property Control Act 57 of 1988.
- Organisations that have registered as Section 21 Companies under the Company Act 61 of 1973.
- Any other voluntary association that is not-for-profit.²²⁸

To apply for registration as a NPO, organisations must fill in a prescribed application form and submit it to the Directorate for non-profit Organisations with two copies of the organisation's founding document i.e. a constitution for a volunteer association; memorandum and articles of association with the company's registration letter for a not-for-profit company; and a deed of trust with the trustees' authorisation letter for a trust. The founding document of the organisation must meet the requirements of section 12 of the NPO Act. Once the organisation is registered, it is obligated, in terms of sections 18 and 19, to submit within nine months after the end of its financial year, annual reports (a narrative report, annual financial statement and an accounting officer's report) including any changes to the organisation's constitution, physical address and office bearers. A thirty days' notice is served to all those registered NPOs whose reports are due as per requirements of section 20 of the NPO Act. Failure to comply with this notice, may result in an organisation's registration status to be cancelled in terms of section 21 for the NPO Act.²²⁹

Unlike businesses that earn their income by selling goods or services, and unlike the government whose resources are provided by taxation, a non-profit organisation does not own the resources it raises. NPOs are expected to be careful and effective managers of the resources entrusted to them by donors, sponsors and the state. Financial management systems need to be developed and maintained by an organisation's office bearers to ensure the appropriate use of resources.

Generally this can be achieved by:

- Setting up appropriate financial systems and employing qualified persons, either full-time, part-time or voluntarily to administer and manage these systems;
- Developing a financial policies and procedures manual (in the case of maturing NPOs) that might include: Financial statement presentation, distribution and timing of financial statements, system of accounting codes, bank statement reconciliation procedures, investment policies, cheque signing procedures, travel expense and per diem policies, income collection and recording systems, payroll policy, insurance policies, controls over fixed

²²⁸Department of Social Development

²²⁹Department of Social Development

assets, controls over inventories (if applicable), budgeting procedures, tax procedures (if applicable) and conflicts of interest;

- Complying with South Africa's accepted accounting and auditing practices, as regards procedures, banking, reporting and record keeping;
- Conducting annual financial audits;
- Preparing realistic annual organisational income and expenditure budgets.²³⁰

(a) Annual Reports

In terms of the non-profit Organisations Act, 1997 (No 71 of 1997), registered Non-profit organisation office bearers (Chief Executive Officers, or governing body Chairpersons, or both) must prepare and submit their annual narrative and financial reports to the Department of Social Development's Non-profit organisation's Directorate. These two reports will contain:

iii. A Narrative (written) Report:

- This describes the organisation's activities over the previous twelve months, and includes the following sections:
- Section A: Basic details about the organisation on the form provided.
- Section B: The organisation's major achievements over the year, in response to the questions provided.
- Section C: List of important meetings held by the organisation during the year, and details of any changes to your constitution.

iv. Financial Report:

The financial report must be completed by a registered accounting officer or an auditor. (An accounting officer is a person who is registered in terms of section 60 of the Closed Corporations Act). The financial report includes the following sections:

- Section A: The organisation's income and basic accounting details on the form provided.
- Section B: A copy of your most recent Annual Financial Statements, which include a Balance Sheet and an Income and Expenditure Report.²³¹

All registered NPOs must comply with the requirements of sections 16-23 of the Act. The main requirements are to submit reports and inform the Directorate of any changes within the NPO.

²³⁰Codes of Good Practice for South African Non-profit Organisations (NPOs). DSD

²³¹NPO Annual reports. DSD

The specifics are set out below.

- The Documentation of the NPO (Section 16 & 17 Obligations)
 - o The registered status and registration number of the NPO must be reflected on all its documents.
 - o The NPO must comply with the provisions of its founding document.
- Finances of the NPO (section 17 Obligations) Every registered NPO must:
 - o Keep accounting records of its income, expenditure, assets and liabilities accordingly to the standards of generally accepted accounting practice (GAAP).
 - o Draw up financial statements, within six months after the end of its financial year, which must include at least:
 - a statement of income and expenditure for that financial year; and
 - a balance sheet showing its assets, liabilities and financial position as at the end of that financial year.

Within two months after drawing up its financial statements, the organisation must arrange for a written report to be compiled by an accounting officer.

The Accounting Officer report must state whether or not:

- the financial statements of the organisation are consistent with its accounting records;
- the accounting policies of the organisation are appropriate and have been appropriately applied in the preparation of the financial statements; and
- the organisation has complied with the provisions of this Act and of its constitution which relate to financial matters.

In addition, it is the Accounting Officer's responsibility to preserve each of its books of account, supporting vouchers, records of subscriptions or levies paid by its members, income and expenditure statements, balance sheets and accounting officer's reports, in an original or reproduced form, for at least five years.

(b) Required Information to be submitted to the NPO Directorate

Every registered non-profit Organisation must, in writing, provide the Directorate with:

- Within nine (9) months after its financial year, a narrative report of its activities in the prescribed form together with its financial statements and the accounting officer's report accordingly to its obligation of keep records.

- the names and physical, business and residential addresses of its office-bearers within one month after any appointment or election of its office-bearers even if their appointment or election did not result in any changes to its office-bearers;
- a physical address in the Republic of South Africa for the service of documents to be received from the Directorate.
- notice of any change of address within one month before a new address for service of documents will take effect; and
- such other information as may be prescribed.

(c) **Changes to the Founding Document (Section 19)**

When the NPO changes its constitution or name, it must provide the NPO Directorate with:-

- A copy of the resolution and a certificate signed by a duly authorised office-bearer confirming that the resolution complies with its constitutions and all relevant laws;
- Where the NPO has resolved to change its name, the original of its current certificate of registration.

(d) **Winding-up or Dissolution of the NPO (Section 23)**

When the organisation resolves to wind-up or dissolve it must, within one month after completing of the dissolution process, send to the Directorate a written notice that the organisation dissolved with the following documentation:

- Certified copies of all relevant documents confirming the winding up or dissolution; and
- A copy of the narrative report, financial statements and the accounting officer's report for the period from its previous financial year end of the written notice.

(e) **Not-For-Profit companies require the following to be considered a functioning entity:**

- A minimum of 2 directors
- 7 subscribers (The directors can also be subscribers)
- Please note: As there is no shareholding in a Section 21 the function of the subscribers are to appoint the directors.

(f) **Important factors to consider**

- All directors should undergo a credit check prior to opening the bank accounts
- Tax exemption is not automatic and the directors must apply for such status from SARS
- Section 21 companies are subject to annual audits²³²

²³² Codes of Good Practice for South African Non-profit Organisations (NPOs). DSD

(g) Registering a non-profit company with the CIPC²³³

For a civil society organisation to be recognised as a legal entity, it must register as a non-profit company (NPC) with the Companies and Intellectual Property Commission (CIPC). NPCs are entities that are set up to help people, protect the environment or to lobby for some good cause. They could include churches, charity organisations and cultural organisations. The primary objective of an NPC is to benefit the public, not to make profit. The income and property may not be distributed to the incorporators, members, directors or officers of a non-profit company, except as reasonable compensation for services rendered by them. All of a non-profit company's assets and income must be used to advance its stated objectives, as set out in its Memorandum of Incorporation (Mol).

A minimum of three incorporators must complete and sign the Mol. A minimum of three directors must be appointed. Non-profit companies must at all times have at least one director (unless Mol indicated a higher minimum number of directors). The appointment of an auditor and company secretary is not mandatory but optional.

vii. Non Profit Companies can register as a:

- o standard Non Profit Company (with members)
- o standard Non Profit Company (without members)
- o customised Non Profit Company (with members),
- o customised Non Profit Company (without members)

viii. A NPC must reserve a company name by completing the Application to Reserve a Name, Form CoR 9.1.

It must pay a filing fee of R75 if submitted manually or R50 if filed electronically. A name reservation is valid for six months. The name of a non-profit company will end with "NPC".

A company must submit the following supporting documents with the application:

- certified passport copies (if foreign national) or certified Identify Document (ID) copies (if South African) of all indicated initial directors and incorporators
- a certified ID copy of the applicant if the application is not made by one of the indicated initial directors or incorporators
- if an incorporator is a juristic person, then a power of attorney for the representative authorised by that juristic person to incorporate the company and sign all related documents

²³³ Registration of NPO. CIPC

- if another person incorporates the company and signs all related documents to the incorporation on behalf of the incorporators and initial directors, a power of attorney and certified ID copy of such a person is required
 - if a name was reserved before the filing of incorporation documents, then a valid name reservation document is necessary.
- ix. If a person is registering a standard Non Profit Company (without members), the following forms should be submitted to the CIPC:
- CoR15.IC
 - CoR 14.I
 - supporting documents
 - The following documents may be filed with the CoR15.IC:
 - o CoR14.I Annexure A
 - o CoR14.I Annexure B if name to be reserved at incorporation
- x. If an auditor, audit committee members and/or company secretary is appointed or if registering a customised Non Profit Company (without members), the following forms must be submitted to the CIPC:
- CoR15.ID
 - CoR 14.I
 - supporting documents
 - The following documents may be filed with the CoR15.ID:
 - o CoR14.I Annexure A
 - o CoR14.I Annexure B if name to be reserved at incorporation
 - o CoR14.I Annexure C if ring fencing
 - o CoR14.I Annexure D if auditor, audit committee members and/or company secretary is appointed
- xi. When registering a customised Non Profit Company (with members), the following forms must be submitted to the CIPC:
- CoR15.IE
 - CoR 14.I
 - supporting documents
 - The following documents may be filed with the CoR15.IE:
 - o CoR14.I Annexure A
 - o CoR14.I Annexure B if name to be reserved at incorporation

- o CoR14.1 Annexure C if ring fencing
- o CoR14.1 Annexure D if auditor, audit committee members and/or company secretary is appointed

If a proposed name is rejected, the company may still be registered and the registration number then becomes the name of the company at incorporation, until such time as an appropriate name has been reserved or approved.

xii. Estimated time frame and costs

- It takes 5-10 working days to reserve a name for a company.
- It may take 5 to ten working days to register a non-profit company.
- The cost for a Memorandum of Incorporation (Subject to allowed reduction) for a standard non-profit company (CoR 15.1C) is R175.
- The cost for a Memorandum of Incorporation (Subject to allowed reduction) for a customised non-profit company with members (CoR 15.1D) or without members (CoR 15.1E) is R475.
- An electronic name reservation costs R50.
- A manual filing of name reservation costs R75.²³⁴

(h) Tax regulations and exemptions²³⁵

Preferential tax treatment is granted to non-profit organisations established for the benefit of the general public. However, this preferential treatment will only be available to organisations complying with the provisions of the Act and related legislation, both on application for exemption from taxes and duties, and thereafter on a continuous basis throughout the existence of the organisation.

vii. To be approved by the Commissioner as a PBO an organisation must be constituted in one of the following ways:

- A company incorporated and registered in the Republic under section 21 of the Companies Act, 1973 whose founding document is a memorandum and articles of association.
- A trust established in the Republic and is registered with the Master of the High Court whose founding document is a trust deed.
- An association established in the Republic, as a voluntary association of persons whose founding document is a constitution adopted by its members.

²³⁴ Registration of NPO. CIPC

²³⁵ Tax Exemption Guide for Public Benefit Organisations in South Africa. 2007. SARS

- A branch established in the Republic by a foreign charitable organisation which is exempt from income tax in its country of origin.

The Commissioner may approve an organisation as a PBO only if its constitution or founding document meets a number of prescribed requirements set out in Section 30 of the Act. The founding document or constitution must clearly state that the activities and resources of the organisation must be exclusively applied in the furtherance of its stated object of conducting one or more approved PBAs. A clause must also be included which clearly sets out the aims and objectives of the PBO, which must be to carry on one or more approved PBAs. It is not adequate to make a general statement to this effect and specific activities including projects and programmes must be identified. The founding document must also provide for the requirements as set out hereafter. When considering an application for exemption, the founding document as a whole will be examined to ensure that these requirements are complied with, notwithstanding the specific wording used to give effect thereto.

viii. Registration with the Director of NPOs

It is no longer a precondition for a PBO to register with the Director of Non-Profit Organisations (NPOs) in terms of the Nonprofit Organisations Act, No. 71 of 1997, in order to be approved as a PBO in terms of the Act. Such registration is a voluntary commitment by an organisation. However, the Commissioner may, upon request by the Director of NPOs, withdraw approval of a PBO if the PBO is convicted of an offence under the NPO Act.

ix. Regulation on independent schools

Independent schools which are registered as such in terms of the SA Schools Act, 1996, can be established as an association of persons or as a trust or a company incorporated under section 21 of the Companies Act, 1973. The school will therefore have a constitution, trust deed or memorandum and articles of association as a founding document. Provided the activities and the founding document comply with the provisions of section 30, the Commissioner may approve the school as a PBO. If the school is approved as a PBO it may also apply for approval in terms of section 18A to issue receipts permitting tax deductibility of donations.

x. Regulations in terms of VAT

The terms “public benefit organisation” and “public benefit activity” which are used for income tax purposes are not used in the VAT Act. Instead the VAT legislation refers to an

“association not for gain” and a “welfare organisation”. Both entities qualify for special VAT treatment. Companies incorporated under section 21 of the Companies Act, 1973 do not automatically qualify as associations not for gain or welfare organisations for VAT purposes. Associations not for gain and welfare organisations are included in the VAT system. The benefit of this inclusion is that if they can register for VAT, they can claim the VAT that they incur as input tax and only levy output tax where there is a charge for the supply of goods and services.

For VAT purposes, any person is required to register for VAT if an enterprise is carried on and taxable supplies in excess of R300 000 for any 12-month period are made. However, where the value of taxable supplies is less than R300 000 for any 12-month period, but exceeds R20 000 a person may register voluntarily. A person cannot register if only exempt supplies (such as education) are made.

xi. Employees’ Tax

The fact that a non-profit organisation has been granted an income tax exemption by SARS does not necessarily mean that it is exempt from employees’ tax. Employees’ tax is the tax that an employer has to deduct from the remuneration that it pays to its employees. The employer must then pay this deducted employees’ tax over to SARS on behalf of each of its employees as a payment towards that employee’s personal income tax liability. A non-profit organisation will, therefore, have to register for employees’ tax with SARS where one or more of its employees earn remuneration that is sufficiently high to be liable for the deduction of employees’ tax.

xii. Unemployment Insurance Fund (UIF) contributions

A non-profit organisation that pays remuneration to its employees will also be liable for unemployment insurance fund (UIF) contributions unless it qualifies for certain exemptions. These contributions must be paid to the UIF office of the Department of Labour or to the local SARS branch where the non-profit organisation is also liable for employees’ tax or the skills development levy.

2.5.6.2. *Registering an older persons residential facility*

If an individual wants to register an older persons' residential facility as an individual or organisation, he/she must apply for permission at the nearest Department of Social Development office.

a) Procedure

The following procedures are relevant for persons wishing to operate an older person's residential facility.

- The person should visit the Social Development office nearest to where the individual lives.
- He/she is required to complete application form 9
- After submitting application a person will be given an acknowledgement letter as proof of application.
- A social worker will invite other role players such as the environmental health practitioner and a medical officer to investigate and assess the intended residential facility.
- After the assessment visit by the role-players, a report of the findings will be submitted to the Department Social Development office where the application will be approved, approved conditionally or disapproved.
- If an individual disagrees with the decision, he/she may appeal to the Minister of Social Development within 90 days of receiving notification.

b) Timeframe

It may take four weeks to process an application for such a residential care facility.

c) Cost

The actual application is free, but a person will pay for other certificates such as the environmental health certificate.

2.5.6.3. *Registration of Shelters and Drop-in Centres*

The registration process described below pertains to organizations that want to initiate the following:

- Any building or premises used for the reception, protection and temporary care of more than six children – between the ages of 8 months and 18 years -in especially difficult circumstances
- A non-residential place of care for children on the street to meet their basic physical, emotional and social needs.

To qualify as a shelter, an organization must:

- Be a registered Not for Profit Organisation (NPO) registration

- Complete an application form
- Develop a daily programme for those who are attending school and for those who are not at school
- Develop a weekly menu
- Obtain a Health Certificate from the Environmental Officer, on a structural and health requirements
- Define a set of House Rules
- Have Building Plans/Hand drawn sketch of the building
- Provide a copy of a constitution, signed and dated (for funding purposes)
- Have contact with the owner of the building (lease- for funding purposes)
- Provide financial report for past year (for funding only)
- Provide Service/Business Plans (for funding purposes)

2.5.6.4. *Registering a partial care facility - Early Childhood Development (ECD) centre*

If an individual takes care of more than six children (0-6 years) on behalf of their parents or caregivers during specific hours of the day or night, or for a temporary period, by agreement between the parents or care-givers, she/he can apply for the registration or conditional registration of a partial care facility - Early Childhood Development (ECD) centre at the nearest Department of Social Development.

a) To establish or operate a partial care facility such as an ECD centre, also known as a crèche, the centre must be:

- registered with the provincial government where the centre is situated
- managed and maintained accordingly, and
- in compliance with the following national norms and standards, namely:
 - a safe environment for children
 - proper care for sick children or children that become ill
 - adequate space and ventilation
 - safe drinking water
 - hygienic and toilet facilities
 - safe storage of anything that may be harmful to children
 - access to refuse disposal services or other adequate means of disposal of refuse generated at the centre
 - a hygienic area for the preparation of food for children
 - measures for the separation of children of different age groups
 - the drawing up of action plans for emergencies, and
 - the drawing up of policies and procedures regarding health care at the centre.

b) Partial care facilities which care for children with disabilities or chronic illnesses must:

- be accessible to such children
- provide facilities that meet the needs of such children
- provide training to persons employed at the facility

A partial care facility may qualify for funding from the department of Social Development if it complies with the norms and standards, and if the facility is in a community where families lack the means of providing proper shelter, food and other basic necessities of life to their children.

- The application must contain the following details:
 - o Applicant's particulars (ID, address and telephone numbers, etc.)
 - o the physical and postal address of the partial care facility
 - o the number of children that will be accommodated in the facility
 - o applicant's qualifications, skills and experience
 - o a description of the contents of the programmes and services to be offered, including the aims and objectives.
- The following information must be submitted:
 - o A business plan containing:
 - The business hours of the partial care facility
 - The fee structure
 - The day care plan
 - The staff composition, and
 - The disciplinary policy
 - o The constitution containing:
 - The name of the partial care facility
 - The composition, powers and duties of the management
 - o An original copy of the approved building plans
 - o An emergency plan
 - o A clearance certificate (a clearance issued by the Department of Justice and Constitutional Development to ensure that your name and staff members do not appear in Part B of the National Child Protection Register or the National Register for Sex Offenders).
 - o A health certificate from the local municipality
- Inspection and monitoring visits by officials from the Department of Social Development will be made to such a facility.

2.5.6.5. *Registration as a psychometrist or counsellor*

A psychometrist is an individual who administers and scores psychological and psychological neurological tests under the supervision of a psychologist or neurologist. Psychometrists often test the functioning of individuals who may be impaired due to work-related injuries, dementia, or other disorders and is trained for specific populations.

The following are mandatory requirements in order to register as a psychometrist:

- Successful completion of a four year degree in psychology that is accredited by the Board for registration as a psychometrist (e.g. B Psych degree or an honours degree that has been accredited by the Board as an equivalent to the B Psych degree).
- The B Psych degree or equivalent degree is based on outcomes; successful completion of an approved fulltime practicum of 6 months duration, or alternatively a part time practicum of 6 months duration to be completed within a period of 12 months.
- The 6 months practicum included in the B.Psych degree must be done under supervision of a registered psychologist according to the requirements for supervision, a determined by the Professional Board.
- This internship may occur from the third year of the degree and shall be not less than 2 months in any given setting.
- The practicum may also occur after completion of the degree;
- Successful completion of the National Examination of the Board. The pass mark for the examination is 70% and psychometrists are required to obtain a sub-minimum of 70% for the questions on ethics. This examination will be conducted on the 1st Wednesday of February, June and October of each year.
- The person who exceeded the time-frame for psychometrists by 5 years or more would be required to complete an additional approved practicum of three months duration and the onus rested on individuals to ensure that they still had the required competencies to practice as Psychometrists.
- A practice number, allocated to all registered healthcare providers is a legal requirement for the process of reimbursement of a claim to either a medical scheme member or service provider. This is in accordance with the requirement of the Medical Schemes Act 131 of 1998 wherein it is stated that a medical scheme may only reimburse a member or a provider of relevant healthcare services for services rendered against a valid practice code number. Health care providers are required to contact the Board of Healthcare Funders of SA (BHF) in order to register a practice number. New registrations cost R115.00 and renewals R100.00. Allocation of a registered practice number takes approximately 3-5 days.

- The register for Nutritionists is not active as the regulations are to be promulgated by the Minister of Health for comment. The matter is being followed-up on a continuous basis.

2.6 SME Lifecycle Requirements

The aim of this section is to elucidate the various aspects relating to SME lifecycle requirements. Various procedures must be completed on a monthly or yearly basis to ensure SMEs adhere to the regulatory framework. These requirements involve, inter alia, registrations, tax returns and reports to various institutions. These aspects are discussed in more detail below.

2.6.1. Tax

2.6.1.1. Turnover Tax

Micro enterprises now have the option to make payments for VAT, employees' tax and turnover tax twice a year. A single combined return will be filed on a twice-yearly basis from 1 March 2013. The turnover tax liability for a year of assessment must be settled by means of two estimated interim payments that are payable in the middle of the year of assessment and at the end of the year of assessment.

The first interim payment is due by the last day of August within the year of assessment. It is determined by estimating the turnover of the business for the full year of assessment, calculating the turnover tax payable on this turnover, and dividing this amount by two. The estimate for the first interim payment must not be less than the taxable turnover for the previous year of assessment, unless SARS agrees.

The second interim payment is due by the last day of February (end of the year of assessment). It is determined by estimating the turnover for the full year of assessment, calculating the turnover tax payable on this turnover, and deducting the first interim payment. To avoid paying a penalty, the second interim payment must not be based on an estimate that is less than 80 per cent of the actual taxable turnover for that year of assessment.

These two payments should be sufficient to settle the final turnover tax liability for the year of assessment, which will be determined on assessment of the annual Turnover Tax return. Any shortfall is payable by the due date on the assessment. Interest will be charged on all late payments. It is not necessary to submit returns with the payments. A Turnover Tax Annual Return must be submitted annually to SARS by a specific due date that will be announced by SARS as part of its annual Filing Season campaigns.

The following records need to be maintained for five years from the date on which the return to which they relate is received by SARS:

- Records of all amounts received by the business for each year of assessment;
- All dividends declared for the year of assessment;
- Records of all assets with a cost price of more than R10,000 each;
- Records of all liabilities that exceed R10,000 each

2.6.1.2. Capital Gains Tax

The prescribed valuation form (CGT 2L) must generally be lodged together with the relevant return of income for the year of assessment in which the asset was disposed of. However, in the case of certain assets, the valuation forms must be lodged with the first return of income, irrespective of whether or not the relevant assets have been disposed of. If the return was not thus submitted, SARS may extend the submission period provided that it can be proved that the valuation was done by 30 September 2004.

2.6.1.3. Corporate Income Tax

Any company or any close corporation (CC) which becomes liable for any normal tax or becomes liable to submit any return of income in terms of section 66 of the Income Tax Act No. 58 of 1962, (the Act) is required to register as a taxpayer in terms of section 67 of the Act. Any such person must register as a taxpayer at SARS within 60 days after so becoming a taxpayer by completing an IT77(C) form. A registered taxpayer is required to complete and submit the annual returns of income in a prescribed form within the stipulated period.

The following entities are required to register as taxpayers for CIT purposes:

- Listed public companies
 - Unlisted public companies
 - Private Company
 - Close Corporations
 - Co-operative, and
 - Small Business Corporations (An entity with an annual turnover of less than R14-million).
- (Note: In terms of companies and close corporations, the return must be completed and submitted within 12 months after the financial year end of the company/close corporation.)

Companies, including CC's, Co-operatives and Body Corporates, are taxed at a rate as announced in the Budget Speech in February of each year and are required to submit a Return of Income: Companies and Close Corporations (IT14) within 12 months from the date on which their financial year end.

SARS encourages corporate taxpayers to complete and submit their IT14SD electronically via eFiling. The benefits of eFiling include faster processing of returns, the ability to submit supporting documents, track returns and refunds, and request the revision and adjust returns electronically. While the declaration can be captured at a local SARS branch, the data for the completion of the IT14SD must be made available by the taxpayer.

2.6.1.4. Dividends Tax

The Dividends Tax operates from the principle that the liability for Dividends Tax is triggered by the payment of the dividend and it falls on the recipient (i.e. beneficial owner) to pay the tax to SARS. However, Dividends Tax is administered on the basis of withholding the applicable percentage of tax from the dividend payment by either the company declaring the dividend or, where relevant, certain withholding agents (i.e. regulated intermediaries).

A prescribed Dividends Tax return must be submitted to SARS by each entity that manages dividends, accounting for the payment/withholding of dividends to beneficial owners and/or the pass through of dividends to regulated intermediaries for further distribution. The return summarises the management (receipt/ declaration of dividends and the distribution of the dividends received/declared) of dividends by the entity and must be accompanied by supporting data underpinning the consolidated view of the return.

Dividends Tax declarations must be done on the DTR02 Dividends Tax Return which is available electronically on eFiling or at a SARS branch. The return makes provision for the capturing of dividends declared/received (input section), the distribution of dividends to regulated intermediaries or beneficial owners (output section) and the calculation of the tax due (tax payable section).

The year of assessment for taxpayers covers a period of 12 months. For individuals and trusts, the commencement date of the year of assessment starts on 1 March and ends on the 28/29 February each year. For Companies and Close Corporations the year of assessment is the applicable financial year.

2.6.1.5. Income tax

Income tax returns are available annually after the end of each year of assessment to registered taxpayers, and must be completed and submitted to SARS each year. The “Tax Season” commences 1 July each year, and the deadlines for the submission of returns are as follows:

- Individual (ITR12) and Trust (IT12TR) returns (non-provisional taxpayers): Last working day of September for postal submission (the paper version) that can be posted or submitted at

the local SARS branch in the designated drop box; or the last working day in November for eFiling via PC or laptop or done electronically by a SARS consultant at a SARS branch.

- Company/CC (IT14) returns: Must be completed and submitted within 12 months after the financial year end of the company/close corporation. The completed form must be submitted to SARS on or before the due date announced by SARS every year. Each year SARS publishes the due date for submission of Income Tax returns in the Government Gazette and embarks on an extensive publicity campaign to inform taxpayers of the deadline for the year.
- The taxpayer is, however, required to keep all the supporting documents for a period of five years from the date of submission of the return. The reason for this is that SARS may, within a five-year period, request these documents to verify the information that was declared on the Income Tax return.
- All exempt organisations must submit annual income tax returns, despite the approval which may result in no tax liability for the exempt organisation. An IT12EI income tax return must be issued for Exempt Institutions.

2.6.1.6. Provisional tax

Provisional tax allows taxpayers to provide for their final tax liability by paying two amounts in the course of the year of assessment. But the final liability is determined upon assessment. Provisional tax payments which are made six months after the beginning of a year of assessment, as well as at the end of it represent tax on anticipated income. Provisional tax estimates and payments are made on IRP6 forms.

2.6.1.7. PAYE, SDL, UIF

During the reconciliation periods, employers are required to submit an Employer Reconciliation Declaration (EMP501) confirming or correcting the PAYE, SDL and UIF declarations per EMP201s submitted, the payments made and the tax values of the Employee Tax Certificates [IRP5/IT3(a)].

The reconciliation periods are as follows:

- The interim reconciliation is for the six-month transaction period 1 March to 31 August and must be submitted during September and October.
- The final annual reconciliation is for the full tax year 1 March to 28/29 February and must be submitted during April and May.

Employers must declare their PAYE, SDL and/or UIF allocations on the EMP201. In the case of Employees Tax, the EMP201 acts as the payment form with each EMP201 containing a unique payment reference number (PRN). This requires that only one payment be made for PAYE, UIF and/or SDL, as opposed to three separate payments as was the case previously.

An employer must issue an employee with an IRP5/IT3(a) where remuneration is paid or has become payable and from which Employees' Tax was deducted. The IRP5/IT3(a) discloses the total employment remuneration earned for the year of assessment and the total deductions.

In terms of Section 8 of the UIC Act, UIF contributions deducted must be paid over to SARS within seven days after the end of the month in respect of which the contributions are payable.

- It must be noted that Section 89 of the IT Act prescribes that where the 7th day falls on a Saturday, Sunday or public holiday, payment must be made not later than the last business day prior to such day.
- In terms of Section 8(2) of the UIC Act, the employer must submit a statement in such form as the Commissioner may prescribe when making any payment. The prescribed statement (EMP201) is automatically supplied to registered employers for payment purposes each month.
- In terms of Section 8(2A) of the UIC Act, every employer shall render a return by such date or dates as prescribed by the Commissioner by notice in the Government Gazette. Where the employer ceases to carry on any business or other undertaking or to be an employer in respect of which the employer was liable to pay contribution, the employer must render the return to the Commissioner within 14 days after the date on which the employer has so ceased to carry on business or undertaking or to be an employer unless the Commissioner directs otherwise.

2.6.1.8. Secondary Tax on Companies (STC)

STC is a tax on dividends declared by companies that are resident in South Africa. It is imposed on companies or close corporations and not on shareholders. STC was introduced in 1993 to encourage the reinvestment of profits and is governed by Sections 64B and 64C read with the definition of "dividend" in section 1 of the Income Tax Act 58 of 1962.

(a) STC Rates

STC is payable on the net amount, which is the dividend declared less the sum of dividends received or accrued during the dividend cycle.

Table 2.7 – Rates of STC for dividends declared during specified periods

From	Until	Rate
17 March 1993	21 June 1994	15%
22 June 1994	13 March 1996	25%
14 March 1996	30 September 2007	12,5%
1 October 2007	31 March 2012	10%

(b) Dividend Cycle

A dividend cycle is the time between dividend declaration dates. The first dividend cycle of a company begins as per the following prescriptions:

- From 1 September 1992,
- If a dividend was declared between 1 September 1992 and 17 March 1993, on the day following that date of declaration,
- on the date on which the company was incorporated, and
- the date on which the company became a resident.

Subsequent dividend cycles begin immediately after the previous cycle has ended. A dividend cycle ends on the date on which a dividend accrues to a shareholder. The date of declaration of a dividend, whether in cash or otherwise, is the date of payment by a company or close corporation or the date of the prior approval of the declaration by the directors or members. STC is payable on or before the last day of the month following the month in which the dividend cycle ends. The necessary payments in respect of SDL that were deducted from remuneration of employees must be made monthly.

(c) STC Returns

- The employer must submit a completed Monthly Employer Declaration (EMP201).
- The employer should issue an Employee Income Tax certificate [IRP5/IT3 (a)] to employees from whom remuneration was deducted.

(d) Reconciliations

- An employer must submit the completed Employer Reconciliation Declaration (EMP501) in order to reconcile SDL deducted with the payments made, as well as the IRP5/IT3 (a) issued to employees.

Records relating to all returns submitted must be kept and maintained for a period of 5 years from the date of the last entry and must be available for inspection purposes by SARS.

2.6.1.9. VAT²³⁶

Vendors are required to submit returns and account for VAT to SARS according to the tax period allocated to them. Available tax periods cover one, two, four, six or 12 calendar months. On acceptance of registration by SARS, the vendor will be allocated one of these categories. Tax periods end on the last day of a calendar month. A vendor may, however apply to the SARS branch office in writing for the tax period to end on another fixed day or date, which is limited to 10 days before or after the month end (the 10-day rule). This must be approved in writing and can only be changed with the written approval of SARS.

(a) Two-month tax period (Category A or B)

This is the standard tax period, which is generally allocated at the time of registration. Under this category the vendor is required to submit one return for every two calendar months.

- Category A is a two-month period ending on the last day of January, March, May, July, September and November.
- Category B is a two-month period ending on the last day of February, April, June, August, October and December.

(b) One-month tax period (Category C)

Under this category vendors are required to submit one return for each calendar month. Vendors will be registered according to Category C when –

- turnover exceeds or is likely to exceed **R30 million** in any 12-month consecutive period. Where a vendor operates more than one business, or operate a business with branches, the sales of all the businesses or branches must be added together to determine a total turnover. This applies, whether or not the other businesses or branches have separate VAT registration numbers;
- the vendor has applied in writing for this category; or
- the vendor has repeatedly failed to perform any obligations as a vendor.

Vendors will cease to be registered under Category C if they apply in writing to be allocated to a different tax period and SARS is satisfied that they meet the requirements of the relevant category. Should turnover exceed R30 million subsequent to registration for VAT, vendors are required to notify SARS to amend their registration to a Category C tax period within 21 days of becoming

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liable to register for a Category C tax period. Failure to notify SARS may result in interest and penalties being levied. As from 1 May 2011 all vendors falling within Category C tax period were required to submit their returns in electronic format and make payments electronically on eFiling.

(c) Six-month tax period (Category D)

Under this category vendors are required to submit one return for every six calendar months. This is a category solely for farmers, farming enterprises or associations not for gain that are carrying on a farming activity, with a total turnover of less than R1.5 million per consecutive period of 12 months. The allocation under this category means that vendors are required to submit their returns for a six-month period usually ending on the last day of February and August. Vendors may, however, apply to the local SARS office to alter the end of the period to another month. An individual's six-month period will be on the last day of February and August. A company or close corporation's financial year-end date will determine on which months their tax periods will end.

Section 25 of the VAT Act requires a vendor that is registered as a farmer to notify SARS once the total value of taxable supplies has exceeded R1.5 million in any 12-month consecutive period.

(d) Twelve-month tax period (Category E)

Under this category vendors are required to submit one return for 12 calendar months. This category is for vendors whose tax periods are periods of 12 months ending on the last day of their "year of assessment" as defined in section 1 of the Income Tax Act or where any vendor falling within this category makes written application therefore on the last day of such other month as the Commissioner may approve.

The vendor applying for registration under this category must comply with the following:

- The vendor must be a company or a trust fund.
- The supplies by the vendor applying for Category E must be made to a connected person in relation to that vendor consist solely of -
 - o the letting of fixed properties; or
 - o the renting of movable goods; or
 - o the administration or management of such companies,
- The connected person who receives the supply must be registered for VAT and must be entitled to deduct the full amount of input tax in respect of those supplies.
- The vendor must agree with the recipients that tax invoices are issued only once a year at the end of the year of assessment of the vendor making the supplies.

Only vendors with certain activity codes can apply to be registered on Category E tax period.

(e) Four-month tax period (Category F)

With effect from 1 August 2005, a new tax period (Category F) was introduced to assist small businesses. The four-month tax periods for each year are as follows:

- March to June to be submitted in July.
- July to October to be submitted in November.
- November to February to be submitted in March.

Category F tax periods are only available to vendors (including companies and close corporations) that have the following prescripts:

- Vendors who have a taxable turnover (that is, standard and zero-rated sales) which is less than R1.5 million in any consecutive period of 12 months, or which is not expected to exceed that amount during the period; and
- Vendors who do not conduct their business under different VAT registered branches, even if the combined taxable turnover of those branches is less than R1.5 million in the 12 month period.

Whilst the tax period normally ends on the last day of the month, there is provision for vendors to adopt a date ending on a day other than the end of the month. If a vendor has an accounting date within 10 days before or after the end of the month in which the tax period ends, the vendor may use that date as the last day for the tax period. A vendor who wishes to apply this option must select a fixed day or date approved by the Commissioner before or after the end of the tax period and to apply the date consistently from one tax period to the next. For example, a vendor may select the 27th day of a month (fixed date), or the last Friday in the month (fixed day but not a fixed date). The election by the vendor to use a cut-off date allowed under the 10-day rule does not affect the due date for submitting the return (which remains the 25th day after the end of the month covered by that tax period).

SARS has approved the following categories of fixed cut-off dates subject to the 10-day rule:

- a specific day of the week;
- a specific date of a calendar month; or
- a fixed day determined in accordance and consistent with the vendor's commercial accounting periods.

Vendors who are required to submit a return for income tax purposes must keep their records for the period referred to in section 73A of the Income Tax Act, that is, five years after the submission of an income tax return relating to the transactions for that period. Vendors that are not required to submit an income tax return should keep their records for a period of five years from the date of last entry in any book. Where the records are not kept in book form, they must be kept for a period of five years after the completion of the transactions, acts or operations to which they relate.

2.6.2. Customs and Excise

2.6.2.1. Licensing

In terms of Section 60(1) and Schedule 8 of the Customs and Excise Act, clearing agent and road haulier licences are valid for a period of one year and must be renewed annually by the 31st of December. Failure to comply will result in the cancellation of a Customs code.

The DA 185 and the relevant annexure(s) must be completed for purposes of licence renewal in terms of Rule 60.01(1)(C). Proof must be attached to the DA 185 where there has been a change in the company's information and the new information must be inserted on the DA 185.

From 1 January 2011, the period of validity of any licence specified in Schedule 8 was to be in respect of:

- a licence issued before 1 January 2011 a period of three years ending on a day before a date corresponding to the date of the month on which such a licence was first issued to the holder;
- a licence issued for the first time after 1 January 2011, a period of three years after the date of issue.

It must be noted that any application for renewal of a licence must reach the Commissioner at least 30 days before the last day of the validity period.

2.6.2.2. Accounting requirements

All registrants or licensees of customs and excise warehouses must submit periodic excise- and levy accounts and returns to the Controller or Branch Manager in whose area the warehouse or registered premises is located within 30 days of the closing date of the accounting period but not later than the penultimate working day of the month following the month in which the accounting period has ended.

In terms of Rule 20.17 of the Act, excise accounts must close between the 25th and the last day of the month or quarterly accounting period.

- Licensees are required to submit the dates on which they intend to close their excise accounts in respect of each month or quarter, to the local Controller / Branch Manager for prior approval.
 - Applications reflecting the required dates for the following calendar year must be submitted for approval before 1 December each year. In exceptional circumstances licensees may be allowed to close their accounts before the 25th of a month. Prior permission must be obtained from the Controller or Branch Manager in such cases.
- i. Licensees of manufacturing (including special manufacturing) warehouses must keep records of the following:
- Raw materials received, used in the production process, and / or removed;
 - Yield from raw materials;
 - Production;
 - Stock on hand;
 - Receipts of bonded product;
 - Removal of bonded product;
 - Removal of rebated product;
 - Removal for home consumption;
 - Returns of duty paid stock;
 - Disposal of such duty paid stock; and
 - Exports.
- ii. Licensees of storage (including special storage) warehouses must keep records of:
- Stock on hand;
 - Receipts of bonded product;
 - Removal of bonded product;
 - Removal of rebated product; and
 - Exports

A registered person and any other person engaged in the importation or exportation of unpolished diamond(s) shall keep, in one of the official languages, the records contemplated in Section 7 of the Diamond Export Levy (Administration) Act on his / her premises in the Republic or such other places as may be approved by the Commissioner.

For purposes of this Act, the retention period for all excise related documents (prescribed customs and excise documents as well as relevant trader's commercial and financial records) is 5 years.

(a) Customs duties

Customs duties are imposed by the Customs and Excise Act 91 of 1964. They are levied on imported goods with the aim of raising revenue and protecting the local market. The SARS Commissioner is responsible for the administration of customs legislation. Three kinds of duties are levied on imported goods:

- customs duties (including additional ad valorem duties on certain luxury or non-essential items);
- anti-dumping and countervailing duties; and
- VAT (which is also collected on goods imported and cleared for home consumption).

i. Customs duty

Customs duty is levied on imported goods and is usually calculated as a percentage on the value of the goods (set in the schedules to the Customs and Excise Act). However meat, fish, tea, certain textile products and certain firearms attract rates of duty calculated either as a percentage of the value or as cents per unit (for example, per kilogram or metre). Additional ad valorem customs duties are levied on a wide range of luxury or non-essential items such as perfumes, firearms and arcade games.

ii. Anti-dumping and countervailing duty

Anti-dumping and countervailing duties are levied on goods considered to be "dumped" in South Africa as well as on subsidised imported goods. These goods are the subject of investigations into pricing and export incentives in the country of origin; the rate imposed will depend on the result of the investigations. These duties are either levied on an ad valorem basis (as a percentage of the value of the goods) or as a specific duty (as cents per unit).

The amount and type of duty imposed on a product is determined by the following main criteria:

- the value of the goods (the customs value);
- the volume or quantity of the goods; and
- the tariff classification of the goods (the tariff heading).

iii. Value-Added Tax

Section 7(1)(b) of the Value-Added Tax Act 89 of 1991 levies VAT at a rate of 14% on the importation of goods into South Africa from export countries - including Botswana, Lesotho, Namibia and Swaziland. However, certain goods imported into South Africa are – under Section 13(3) read with Schedule 1 - exempt from VAT on importation.

Section 13(2)(a) of the VAT Act sets the value to be placed on the importation of goods into South Africa. The value is deemed to be: the value of goods for customs duty purposes; plus any duty the Customs and Excise Act levies on the importation; plus 10% of that value. However, Section 13(2)(b) provides that the value is not increased by the factor of 10% if the goods have their origin in Botswana, Lesotho, Namibia or Swaziland.

iv. Determining customs values

Customs values are set by the General Agreement on Tariffs and Trade (GATT) valuation code, which involves six valuation methods. The majority of goods are valued using method one, which is the actual price paid or payable by the buyer of the goods. The "free on board" price forms the basis for the value, but allows for certain deductions (such as interest charged on extended payment terms) and additions (such as certain royalties).

Customs officials pay particular attention to the following issues:

- the relationship between the buyer and seller;
- payments outside of the normal transactions (such as royalties and licence fees); and
- restrictions that have been placed on the buyer.

These factors can result in the price being increased for the purpose of determining customs value, directly affecting the duty payable.

v. Customs declarations

A declaration made to Customs on a bill of entry at the time of importation and exportation must be accurate and correct. Acceptance of the bill of entry by Customs does not mean that the information provided has been accepted as being correct. These bills of entry and related documents must normally be retained for five years. If errors are detected by Customs - whether duties were

payable or not - the Act provides for penalties of up to three times the value of the goods, in addition to the forfeiture of the goods.

Importers importing commercial goods into South Africa, and exporters exporting commercial consignments from South Africa, must register with SARS. Non-commercial consignments are, however, excluded from registration, provided that this is limited to three importations per year.

2.6.3. CIPC annual requirements²³⁷

2.6.3.1. Annual Returns

An annual return is a summary of the most relevant information pertaining to a company and close corporation. By lodging annual returns companies and close corporations ensure that the CIPC is in possession of the latest information. It also confirms that the company and close corporation is still in business or will be doing business in the near future.

All companies (including external companies) and close corporations are required by law to lodge their annual returns with CIPC (previously CIPRO) within a certain period of time every year. An annual return is a statutory return in terms of the Companies and Close Corporations Acts and therefore **MUST** be complied with. Failure to do so will result in the Commission assuming that the company and/or close corporation is not doing business or is not intending on doing business in the near future. Non-compliance with annual returns may lead to deregistration, which has the effect that the juristic personality is withdrawn and the company or close corporation ceases to exist.

2.6.3.2. Filing of annual returns

The Act makes a distinction between local companies and external companies' annual returns and the content of each differs. There will therefore be three annual return lodgement avenues namely for local companies, external companies and close corporations. Annual returns for local and external companies must be filed within 30 business days from the anniversary date of incorporation. If filing later than the 30 business days an increased fee is payable up until the company is deregistered due to non-compliance.

There is no distinction under the new Companies Act between company types and non-profit companies will therefore also be required to lodge annual returns. The fees applicable are summarised below.

²³⁷CIPC

Table 2.8- Annual CIPC fees for filing annual returns

Annual Turnover	Filing within 30 business days of business anniversary	Filing more than 30 days after business anniversary
Less than R1 million	R100	R150
R1 million but less than R10m	R450	R600
R10 million but less than R25m	R2000	R2500
R25 million or more	R3000	R4000

(Source: CIPC)

2.6.3.3. Trade Mark Registration²³⁸

A trade mark is registered for a period of 10 years, and the renewal date is determined from the date of application. A trade mark can be renewed indefinitely for subsequent periods of 10 years, upon payment of the prescribed renewal fees. A renewal reminder will be sent to the trade mark proprietor, at its address for service, 6 months prior to the expiry date of the registered trade mark.

The proprietor of the registration however, also has a duty to ensure that the registration does not expire.

- A form TM5 must be completed and lodged in duplicate for each trade mark to be renewed, on/or before the expiry date
- A prescribed fee of R260.00 is payable in respect of each trade mark that must be renewed
- In respect of a renewal application/s that is lodged within 6 months after the expiry date, an additional penalty fee of R48.00 (plus R260.00) is payable
- Where the renewal application/s is lodged more than 6 months after the expiry date, a further penalty fee of R145.00 (plus R260.00) is payable

2.6.3.4. Design Registration²³⁹

Essentially a "Design" is about shape and features that appeal to the eye. Some designs are necessitated by function and others are aesthetic. Design is about the shape, form, appearance, pattern, ornamentation and configuration of a product or article for e.g. the design of a ring (Jewellery) is generally dictated by aesthetic features.

²³⁸CIPC
²³⁹CIPC

There are 2 types of designs which can be registered:

- An aesthetic design
 - o Has to be new and original
 - o Beauty is in its shape, configuration or ornamentation
 - o Must be able to be produced by an industrial process
- A functional design
 - o Has to be new and not commonplace
 - o Where the shape or configuration is necessitated by the function
 - o Must be able to be produced by an industrial process
- The Lifespan of a Design

Protection is afforded to aesthetic designs for a period of 15 years, and to functional designs for 10 years. Registered designs have to be renewed annually before the expiration of the third year, as from the date of lodgement.

2.6.3.5. Patent Registration²⁴⁰

A patent can last up to 20 years, provided that it is renewed annually before the expiration of the third year. It is important to pay an annual renewal fee to keep it in force. The patent expires after 20 years from the date of application.

2.6.4. Compliance in terms of annual returns for Co-operatives

In terms of Section 29 of the Co-operatives Act (No. 14 of 2005), a Co-operative must hold its first annual general meeting within 18 months of its registration. Subsequent annual general meetings must be held within six months after the end of the preceding financial year.

- iii. The annual general meeting must have the following procedures on its agenda:
 - Appoint an Auditor (In terms of Section 50 of the Co-operatives Act)
 - Co-operative to submit a completed CR4 form to the office of the Registrar
 - Approve a report of the board of the affairs of the Co-operative for the previous financial year
 - Approve the financial statements and Auditors report where applicable for the previous year (In terms of Section 48 of the Co-operatives Act)
 - Co-operative to submit Financial Statements and Auditors report together with completed CR7 form to the office of the Registrar of Co-operatives.
 - Elect directors (In terms of Section 33 of the Co-operatives Act No 14 of 2005)
 - Co-operative to submit names of elected board of directors by completing CR2 form.

²⁴⁰CIPC

- Elect a supervisory committee if required by the constitution of the Co-operative

iv. Recordkeeping by a Co-operative

A registered Co-operative must keep (in terms of the Co-operatives Act, 2005) at its offices the following:

- Its Constitution, including any amendments thereto.
- The minutes of General Meetings in a Minute Book.
- The minutes of meetings of the Board of Directors in a Minute Book.
- A list of members / register of members setting out-
 - o the name and address of each member.
 - o the date on which each member became a member.
 - o if applicable, the date on which a person's membership was terminated.
 - o the amount of any membership fees paid, the number of membership shares owned and the number and amount of member loans.
- A register of directors setting out-
 - o the name, address and identity number of each director, including former directors.
 - o the date on which such directors became or ceased to be directors.
 - o the name and address of any other Co-operative, company or close corporation where both present and former directors are, or were, directors or members.
- A register of director's interest in contracts or undertakings.
- Adequate accounting records, including records reflecting the transactions between each member and the Co-operative for the purpose of calculating the patronage proportion.
- The Co-operative must keep its accounting records-
 - o for a period of five years after the end of the financial year to which they relate, in the case its main object involves its members conducting transactions with it.
 - o for a period of three years after the end of the financial year to which they relate, in the case its main object does not involve its members conducting transactions with it.

2.6.5. Compliance in terms of Annual Reports for NPOs

In terms of the non-profit Organisations Act (No. 71 of 1997), registered Non-profit organisation office bearers (Chief Executive Officers, or governing body Chairpersons, or both) must prepare and submit their annual narrative and financial reports to the Department of Social Development's Non-profit organisation's Directorate.

These two reports will contain:

(a) Narrative (written) Report:

This describes the organisation's activities over the previous twelve months, and includes the following sections:

- Section A: Basic details about the organisation on the form provided.
- Section B: The organisation's major achievements over the year, in response to the questions provided.
- Section C: List of important meetings held by the organisation during the year, and details of any changes to your constitution.

(b) Financial Report:

To be completed by a registered accounting officer or an auditor. (An accounting officer is a person who is registered in terms of section 60 of the Closed Corporations Act). The financial report includes the following sections:

- Section A: The organisation's income and basic accounting details on the form provided.
- Section B: A copy of your most recent Annual Financial Statements, which include a Balance Sheet and an Income and Expenditure Report.²⁴¹

2.6.6. Compensation for Occupational Injuries and Diseases annual requirements²⁴²

Before 31 March each year, all employers (including contractors) must submit a statement of earnings paid to all their workers from the beginning of March to the end of February. The annual assessment fee is calculated on workers' earnings and an assessment tariff based on the risks associated with the type of work being done. Based on Legislation in Section 82, of the Compensation for Occupational Injuries and Diseases Act the formula for the Assessment fee is the total workers' pay divided by 100 multiplied by the assessment tariff. Based on legislation in Section 83, of the Compensation for Occupational Injuries and Diseases Act, these Assessment tariffs are reviewed annually.

Employers fall into one of over a hundred subclasses, each with its own assessment tariff. If an employer's accident costs are higher than others in the same subclass, the assessment tariff may be

²⁴¹NPO Annual reports. DSD

²⁴²Dept. of Labour

increased. If costs are lower, the rate may be reduced. Assessment fees are payable in advance within 30 days of the date on the assessment notice sent to employers each year.

2.6.7. Annual compliance in the construction industry

(a) Electrical Contractors

All contractors applying for the EB class of works must provide the CIDB with an originally certified copy of their Electrical contractor's certificate, issued by the Electrical Contractor's Board. It is important that the Electrical contractors' certificate is in the name of the company applying and it must still be valid at the time of registration. A valid, originally certified copy of the Electrical contractors' certificate must be provided to the CIDB annually.

(b) Potentially Emerging Enterprises

Contractors may also apply to be recognized as Potentially Emerging (PE) contractors. "Emerging enterprise" means an enterprise which is owned, managed and controlled by previously disadvantaged persons and which is overcoming business impediments arising from the legacy of apartheid.

A registered, potentially emerging contractor may be awarded a contract at one level higher than the enterprise's registered contractor grading designation, if the client or employer:

- is satisfied that such a contractor has the potential to develop and qualify to be registered in that higher grade; and
- ensures that financial, management or other support is provided - in the context of a targeted development programme to enable the contractor to successfully execute that contract.

(c) Registration of contractors with the Construction Industry Development Board (CIDB)²⁴³

All applications must be submitted on an approved registration form, which may be collected at any of the nationwide Construction Contact Centres, or downloaded from the CIDB website.

- Contractors applying for Grade 2 - 9 must use the application form CRS F006.
- Contractors applying for Grade 1 must use the application form CRS F007.

Registration is valid for a three year period, subject to payment of an annual fee and subject to compliance with the code of conduct for contractors as published by the CIDB in the Government Gazette no. 25656 of 2003. To prevent fraud the CIDB no longer prints contractor registration

²⁴³Construction Industry Development Board

certificates. Clients and other stakeholders must consult the CIDB website www.CIDB.org.za to verify a contractor's grade.

Table 2.9 – CIDB registration fees

Grade	Maximum Contract Value for each Grade	Administration fee	Annual Fee
1	R200 000	R450	Not applicable
2	R500 000	R250	R250
3	R1 500 000	R750	R300
4	R3 000 000	R750	R800
5	R5 000 000	R750	R1 500
6	R10 000 000	R750	R3 000
7	R30 000 000	R750	R8 000
8	R100 000 000	R750	R25 000
9	Greater than R 100 000 000	R750	R40 000

The contractor must ensure he complies with the following:

- confirm particulars provided on his application form annually on or before the anniversary date of his registration;
- pay the relevant administration fee(s), as well as the stipulated annual fee;
- notify the CIDB of any change of particulars relating to an existing registration;
- be free from any restrictions to tender;
- comply with the Code of Conduct for All Parties Engaged in Construction Procurement, as published by the CIDB in the Government
 - o Gazette no. 25656 of 2003.
 - o annually provide a valid, original tax clearance certificate, upon expiry of the previous certificate; and
 - o renew registration every three years for requalification of grades.

2.6.8. Annual Tourism compliance

2.6.8.1. SATSA membership²⁴⁴

It is advisable that any tourism venture register with the South African Tourism Services Association. There are annual fees payable and the fees structure is set out in the table below:

Table 2.10- SATSA Annual membership fees

Membership level	Description	Annual fee (VAT incl) payable on receipt of invoice after approval
International	Internationally registered and based business	R6 100.00 (Bonding included*)
Regional	Business based in SADC countries other than RSA	R6 100.00 (Bonding included*)
National	RSA business operating widely and/or marketing internationally	R6 100.00 (Bonding included*)
Chapter	RSA registered business and an entry level meant for smaller tourism undertakings	R3 438.00 (Bonding included*)
Component	Business owned, managed or identified as one brand by a National member	R1 387.00
Associate	Tourism associations/ regional authorities / non-profit marketing bodies	reciprocal basis (i.e. no membership fee)
*SATSA reserves the right to charge 2% interest pm 90 days after date of invoice. *Bonding is compulsory for all approved members. A non-refundable APPLICATION FEE of R 1024.00 (incl. VAT) is required. ALL supporting documents should be sent at the same time.		

(Source: SATSA)

²⁴⁴ South African Tourism Services Association.

(a) Tour Guide Registration

All tourist guides need to register as a tour guide as per the Tourism Second Amendment Act No. 70, 2000. Tourist guides must re-register every two years, must have completed training as prescribed by the Tourism, Hospitality and Sport Education and Training Authority (THETA) and must have undergone assessment by an accredited THETA assessor. According to the Act, tourist guides must register with the Department of Environmental Affairs and Tourism by contacting the Provincial Registrar of that particular province in which they live in order to be recognised as a legal guide.

i. Any person who wishes to be registered as a tourist guide must:

- Submit valid proof of THETA assessment (certificate).
- Submit a copy of Declaration of Competence from assessor indicating clearly the category for which the guide has been assessed e.g. Site Guide – Mountaineering - Abseiling.
- Pay R240 (registration renewable every 2 years).
- Include 4 passport size, colour photos with their registration.
- Include proof of South African citizenship i.e. certified copy of a South African ID or a valid residential/work permit.
- Include a signed copy of the Tourist Guide Code of Conduct and Ethics.
- Be at least 21 years of age.
- Submit a valid First Aid certificate, from an institution recognized by the Department of Labour (e.g. Red Cross, St John's, the Fire Brigade etc.).
- Submit a letter of verification from a consulate should the guide speak a foreign language.

ii. Other requirements for operating as a tour guide are the following:

- Payment of tourist guide registration fees occurs on a bi-annual basis
- Renewal of First Aid certificate is compulsory every three years
- In case of Driver guides, renewal of PDP is compulsory every two years

(b) Travel Agency registration

Travel agencies wishing to sell airline tickets must be registered with IATA (International Air Travel Association). The Certification is valid for two years and in that time the agency can maintain its IATA TTP Certificate by earning 50 points from the following options:

- Obtaining a new reference letter from current employer or other proof of participation in the industry over the past 24 months (15 points)

- There are 10 points for each of IATA's International Travel and Tourism Training Program courses, either Classroom or Self-study, taken during the past 24 months
- Delivering a training or acting as a guest speaker in a field of expertise, (10 points)
- Attending an industry event or purchasing a relevant publication (5 points)
- Actively participating in IATA webinars or workshops (5 points)
- Actively promoting the IATA Certification programs (5 points)
- Proof of membership of an industry association for certain specialty (5 points)

Re-certification for a Travel Agency must be accompanied by the following documents:

- Copy of current IATA TTP Certificate of Competency
- Updated CV
- A USD 250 re-certification fee (payable upon approval)

In addition, every IATA Travel Agency is required to have a qualified BSPZA (Billings and Settlement Plan Southern Africa) consultant in the office at all times. BSP is the standardised accounting function for IATA accredited travel agents, controlled by IATA. All travel agents should understand the BSP function in terms of ticketing and airline accounting, including information on cancellations, refunds, etc.²⁴⁵

(c) Liquor licences renewals²⁴⁶

Any tourism operation wishing to sell or provide alcohol must have a liquor licence. These licences are issued by the Province (in the case of the Free State, it is the Free State Liquor Authority) and must be renewed annually. All liquor licences are to be renewed by the end of December failing which, the company is liable for a 50% penalty of total annual licence renewal fee if paid in January or 100% penalty if paid in February. March to August is the period for reconciliation and spade-work verification of payments, while September to October is the preparation period of renewal for the following year.

2.6.9. Professional Driving Permit (PrDP) renewal²⁴⁷

Professional Driving Permits are valid for two years. In terms of a renewal of a Professional Driving Permit (PrDP), the applicant has to go for a medical assessment, eye test and have their fingerprints taken. The Application for Professional Driving Permit (Form PD I) form must be completed by the applicant. The Medical Certificate (Form MC) will have to be completed by a medical professional. The requirements stipulated for the issuing of a PrDP remain applicable for a renewal of a licence . In

²⁴⁵IATA

²⁴⁶South African Government Services

²⁴⁷South African Government Services

terms of the cost, the issuance of a PrDP involves the application fee (approximately R75.00) and the Issue fee (approximately R186.00). These fees are provincially based.

Driving licence card renewals must be made in person at any Driving Licence Testing Centre. Applicants are required to complete an application form and must provide an ID book, two ID size photos (colour/black and white) and a current driving licence card. If the card has expired, the applicant will need to submit another four ID photos.

2.6.10. Social Services Annual compliance

2.6.10.1. Social workers and Social Auxiliary Workers²⁴⁸

Regulation 5 of the regulations governing registration of Social Service Professions, stipulates that annual fees are payable before or on 1st January every year but not later than 31st March each year, irrespective of whether an applicant has received an invoice or reminder or not. Payments received after 31 March are regarded as 90 days overdue, and will result in an individual's name being removed from the register.

The payment schedule for re-registration as a social worker is as follows:

- Fully registered Social Workers: R380
- Fully registered Social Auxiliary Workers: R186
- Adoption Specialists approved by DSD and registered as such with SACSSP, must add R172 to their R380 annual fees. The total annual fee therefore: R552
- All practitioners over 65 years by 31 March are exempted from paying annual fees.

2.6.10.2. Annual fees in the health care sector²⁴⁹

Health care specialists such as counsellors, occupational therapists, etc. are required to pay annual fees to the Health Professionals Council of South Africa. The annual fee paid by health care professionals is used to cover the costs of:

- Running the Professional Board under the jurisdiction of Council as well as the HPCSA and its structures.
- Administering the professions registered with the HPCSA in terms of registration, maintaining of standards of education and training as well as the maintaining of fair standards of professional practice.

Annual fees are payable to the HPCSA by 1 April and are valid until 31 March of the following year. It is the responsibility of every registered practitioner to ensure that his/her annual fee is paid by 1

²⁴⁸Dept of Social Development

²⁴⁹Health Professionals Council of South Africa

April of each year. Registered health practitioners who have not paid their annual fees by 1 April of a particular year, will be erased from the register within three months of the due date of 1 April. The fees range widely for each occupation from R771 for Counsellors to R 1193 for Occupational Therapist.²⁵⁰

Counsellors should also ensure that they renew their practice number registration with the Board of healthcare Funders. Renewals cost R100.00 per registration.

²⁵⁰Health Professionals Council of South Africa

Section Three: Identifying potential areas of red tape and bottlenecks

3.1. Definition

“Red Tape” is a short hand for unnecessary or excessively complicated regulations and inefficient administrative processes (SBP 2008, 9). The expression ‘red tape’ refers to any unnecessary or redundant regulation that hinders productivity (CFIB 2010, 2). Legislation, regulations, fees, permits, paperwork, standards, processing time, guidelines, filing and certification requirements, reporting, investigation, inspection and enforcement practices, and any procedures that affect efficiency of government services for the clients served.

Red Tape can be described as:

- an official rule, regulation or bureaucratic procedure / process which is marked by excessive complexity and results in unnecessary delays, inaction &/or cost(s),
- is (no longer) effective in achieving the purpose for which it was created, because the compliance burden/ costs exceeds the value of its benefit(s)

Sources of Red Tape may be described as poor or inappropriate:

- Rules or regulations
- Administrative systems and procedures or processes
- Communication & information exchanges (between municipalities and business and within municipal departments, between municipalities and other spheres of government or agencies)

The impacts of red tape are numerous and often have cost implications for businesses as a result of slow turnaround time by municipal units, additional costs which may compromise the growth, survival, or sustainability of the business, leading to lost business opportunities, which in turn has a negative impact on job creation and ultimately municipal revenue.

Officials from the Mangaung Municipality shared their perspectives on what they saw as key red tape issues negatively impacting on businesses in Mangaung. The following issues were highlighted:

- Many red tape issues exist in the Province, some of which include application forms which are complicated;

- Red tape issues are similar across municipalities, e.g. lack of delegation to lower levels, decision making centred around one or few persons, lack of access to officials, or officials are called to ad-hoc urgent meetings, which distracts officials from focussing on their duties. Bottlenecks were pointed out where e-mails, messages, requests, etc. are stuck in one office in an in-tray;
- In supply chain management, a requirement for rates and tax certificates makes it difficult for informal businesses to bid on municipal tenders;
- Some regulations, such as paying of service providers within 30 days, make it difficult for service providers to pay staff they bring on board to deliver on municipal tenders (finance departments will often wait with paying on day 30 to save money, improve cash flow, etc.);
- Local government in SA is highly regulated (for example rezoning, signage);
- Political interference was seen as a salient issue with regards to red tape;
- Municipal staff lack of knowledge of policies that relate to small business;
- Interference in supply chain processes is of concern to most officials;
- There is a need to relax supply chain processes to accommodate SMEs;
- Frequent changes in reporting processes, templates, etc. make it difficult for officials to stay up to date on compliance issues;
- A low staff morale complicates service delivery;
- There is a confusion of roles within Municipalities, e.g. the Human Settlements Department might be asked to deal with leases, but this function falls under the jurisdiction of property management. This is sometimes done to circumvent the correct process and procedures.
- Senior management is highly influenced by political heads;
- Devolvement in terms of local Municipalities is often misperceived, as the municipality is often just receiving applications or playing a role in initial steps of a certain process, but the primary decisions are still taken by provincial government.
- ICT infrastructure is not integrated within local Municipalities.
- By law, a skills development levy is paid by an employer, this should be used to develop skills of officials within municipal structures;
- There is a culture of deferral of responsibilities, i.e. “passing the buck”, within the Municipal system;
- The lack of functioning LED Forums is a worrying issue to most officials;
- Officials are of the opinion that a red tape Service Charter gives a time frame for turnaround times, as per a sub-directorate for the Mangaung Metro Municipality.²⁵¹

²⁵¹ Free State SME Development Initiative Red Tape Reduction Meeting with the private sector Mangaung Metro Municipality, Bloemfontein 24 May 2012

Municipalities have a direct impact on SMEs through their policies on property valuation, user charge collection and levies collection. Businesses bear not only the intended costs, which are the actual payments to municipalities for services, but also the unintended costs, including the time and effort required for tax administration. These costs are borne internally, by hiring a specialist who does the necessary paperwork or externally, by contracting accounting services. In either case, the red tape increases the cost of conducting business and must be minimised.²⁵² However, it is worth keeping in mind that red tape exists in a wide range of areas and often involves complex linkages between the three spheres of government.

The main areas of focus for this document are red tape as pertaining to rules and regulations designed to achieve policy goals, but not achieving them, as well as inefficient procedural systems in terms of administrative management. Over-regulation has been identified by the business community as a significant constraint to growth.

The five most time consuming and troublesome categories of regulations, according to business surveys are:

- Tax related - VAT, tax administration, UIF, PAYE
- Labour related - The Commission for Conciliation, Mediation and Arbitration (CCMA's) and bargaining councils
- Sectoral Education Training Authority (SETA)- related
- Municipality related - regulations, charges and levies
- Health, safety and BEE- related.²⁵³

Over-regulation also impacts more heavily on small businesses than it does on larger firms. Regulatory compliance costs amount to 8% of turnover for small firms with a turnover of less than R1 million, compared to about 1% of turnover for firms with a turnover of more than R5 million.²⁵⁴

3.2. Property rates

While an SME that owns property will be directly affected through actual payment of rates and transaction costs, those that rent properties are also affected. For example, the rent charged on a property is directly linked to the loan repayment on a property and the value of property rates.

²⁵² Impact of Municipal Regulations on SMMEs: 2006 Development Policy Research Unit: UCT

²⁵³ Counting the cost of red tape for business in SA. 2005. SBP

²⁵⁴ Ibid.

Therefore, even while interest rates have been coming down, rentals have been increasing as property rates, a buoyant source of municipal revenue, have been increasing.

A business owner, for example, who obtains permission to start a SME on his property, may gain from the Property rates Act. The Act states that the first R15 000 of the market value of all residential properties used for multiple purposes, provided one is for residential use, is exempt from rates payments. Problems occur once improvements are made to the property that pushes up the market value beyond its threshold value. Some municipalities may increase the minimum requirements beyond the threshold value. A business owner must consider how much this financial benefit weighs against any other supply side factors, such as private sector business support, access to start-up capital, etc.

One area of impact of property rates is the case of properties utilised for multiple use, such as a block of flats with businesses on the ground floor, residential property with a Spaza Shop, etc. For a small business owner or a potential market entrant who has registered property with a market value higher than the threshold value described above, some clauses of the Property Rates Act (PRA) may expose SMEs to certain risks. S 27 (2) of the PRA states that a person is liable for paying rates whether or not that person has received a written account from the municipality. Here, the 'constructive knowledge' principle applies to rates payers, and although not an unfamiliar concept, may prove to be a source of dissatisfaction. Constructive knowledge in this regard simply means that it is expected that property owners familiarise themselves with any applicable legislation.

Section 102 of the Municipal Systems Act (Act No.32, 2000) states that "a municipality may consolidate any separate accounts of persons liable for payments to the municipality, and credit a payment by such a person against any account of that person." A problematic situation could arise when user charges on water and electricity incurred by tenants are added to the property owner's rate account. Small businesses renting from properties used for multiple purposes may be at risk when other tenants (residential or non-residential) run arrears, as this could result in discontinuation of municipal services. Moreover, Section 28 of the PRA allows municipalities to recover property rates in arrears from tenants, occupiers and estate agents. The amount recoverable is limited to only the amount of rent or other money receivable by the owner. This clause may disadvantage small businesses when other tenants or the property owner run arrears.

The legislative impact of the PRA seems to be noteworthy for small and medium-sized enterprises, which are more likely to own property or rent from existing owners. Survivalist enterprises do not come under the direct impact of property rates, as they typically operate from under-serviced

informal settlements, or from informal marketplaces that do not fall under the direct control of local authorities, such as pavements and beaches. Property rates are invariably linked to the level of municipal services provided; therefore under-serviced areas are likely to not have to pay rates at all. Even if certain areas do receive municipal services, the value secondary effects of property rates though, in that informal lease agreements may exist. Initial research indicates that survivalist SMEs do not identify property rates as impeding their growth, however, better-established SMEs do experience that property rates impact them.

It is recommended that checks and balances that are available through the legislation are exercised. Municipalities should engage with SMEs with regards to property rates policies in order to ensure that reasonable levels of rates are put in place.

In terms of potential risks from certain clauses of the Act, SMEs might require assistance to understand how these clauses impact them should they want to formalise or grow.

3.3. Levies

SMEs are directly impacted by the rates, tariffs and levies imposed by municipalities for the delivery of certain services. Due to the range of services provided by municipalities, the rates and tariffs faced by enterprises include tariffs for water, sanitation, refuse removal and electricity. The Bureau of Economic Research Survey (2006)²⁵⁵ ranked Municipal Services as the 5th main obstacle to business growth. 29% of firms reported this factor to be a serious to debilitating constraint to economic growth. The survey also identified sectoral differences in the ranking of growth obstacles. For example, the construction sector ranked municipal services as the 4th main constraint, as compared to services which ranked these 7th. 39% of construction firms reported this factor to be a serious to debilitating constraint to economic growth. The construction sector has a strong interface with municipalities due to the nature of the property development process.

3.3.1. Electricity

Electricity rates are high for all consumers, but businesses requiring a supply of quality and consistent electricity are especially affected by high tariffs. For example, electricity tariffs for Mangaung Metropolitan Area managed by Centlec, was increased with 8.78% from July 2012. The rates for the active energy charge for businesses increased from R 1.00/kWh for 2012 to R1.28/kWh for the summer of 2013 and R1.40/kWh for the winter of 2013.

Table 3.1-Mangaung Metropolitan Electricity Tariffs for Businesses 2012/13

²⁵⁵Bureau of Economic Research. 2006. SA Economic Growth Constraints: Results from a BER Survey.

Tariff: Flat Business*					
	2011/12		% Increase	2012/13	
	Summer	Winter		Summer	Winter
Basic Charge (service levy)	R535	R535	-100%	-	-
Active Energy Charge (c/kWh)	R1.00	R1.00	31%	R1.28	R1.40
Overall Increase			-34.50%		
All prices excl. VAT.					
*Business Connection: 0-80A per phase, 3 phase kWh meter small business connection					

(Source: Centlec Commercial Tariffs Guide 2012-2013)

3.3.2. Water

The establishment of a national water utility does not affect the supply of water to consumers, which will remain the responsibility of municipalities. Most municipalities set their tariffs by distinguishing between different users of water in terms of consumer categories. In general the three categories used are: 'domestic', 'industrial and commercial' and 'other'.

The Mangaung Metropolitan area's consumptive water tariff policy reveals that residential consumers are further distinguished between sub-categories, such as residential only, bulk meter, unimproved erf, unmetered erf, etc. However, no such differentiation is available for industrial and commercial users indicating that no special provisions are currently made for small businesses.

The municipality proposed an increase on commercial water usage for the period 2012/13 of:

- 9.02% - 1 to 60kl
- 19.97% - 61 to 100kl
- 25% - 100kl+

Current lack of focus on SMEs in water tariff settings can be directly linked to national legislation (Water Services Act) and the two white papers. For example, the affordability and basic services provisos are accorded to poor households in urban areas and not to survivalist or micro enterprises. The manner in which a utility such as water is provided to consumers dictates that formalised SMEs are clubbed together with large industries that operate on a completely different scale.

3.3.3. Municipal Assessment Rates

Municipal Assessment Rates charges are calculated based on a rate-in-the-Rand of the property valuation, less prescribed allowances and rebates. The Valuation is the combined land and improvement value as per the valuation Roll, as determined by the Municipality's valuers.

The combined valuation of land (including hanging properties) and improvements is normally reflected as a single rand amount on the rates account. The allowances, tariffs and rebates are also normally reflected on the rates account, or can be derived by decompiling the charges applied. Many Municipalities, particularly the larger Metros, have been somewhat weighty in their valuation assessments resulting in many properties being valued well in excess of their market value. Assessment rates for Mangaung increased with 9% across the board in 2012, which translates as (3,862 cent per rand on the rateable value of business property (exempt from VAT).

The administrative burden on small businesses in the registration process for services with municipalities is strenuous. For example, the following documentation is required by most municipalities in order to apply for municipal services:

- Certificate of business registration with registration for municipal services not completed with either proof of registration or exemption.
- Certified copy of ID
- Proof of personal surety
- Proof of ownership of property or landlord's consent or lease agreement.
- VAT registration number where applicable.

Small businesses are also expected to pay a cash-deposit for the registration of water and electricity. There is also the threat of municipalities deciding at a later stage that the deposit was insufficient.

The municipality then has the right to request that the deposit amount be increased unilaterally, and to include such an increase in the account presented to the SME.

Recommendations:

Rates and tariffs affect small businesses and have a larger impact, because these entities have a smaller turnover and are less established than their larger colleagues. Furthermore, they have less access to cash flow and volatile sales profiles. Municipalities apply different tariff structures for domestic consumers of utilities and subsidise indigent users of basic services (including water, sanitation and electricity services) through their rates and tariff policies. However, the same is not applied to very small businesses, some of who may be in need of similar assistance from local governments. It is clear that different categories of SMEs are not addressed by municipal policies governing service provision at the moment. SMEs are not differentiated from larger industrial and commercial users and the fact that many of them operate from households is also not taken into account. Special attention to SMEs can assist Municipalities in fulfilling their LED development mandates, attracting SMEs through reduced user charges, coupled with other incentives, could encourage economic development. An example is the Mangaung Urban Development Zone (UDZ), which entitles property owners within the proclaimed zone to share in the tax incentives made available for the improvement of their buildings. Furthermore, lower costs of water and electricity, together with no future electricity black-outs and enhanced reliability will boost business uptake of new ventures.

3.3.4. Tax

In a previous section of this document the taxation framework as pertaining to SMEs were examined. The registration procedure and the life cycle requirements were also examined. When SBP conducted a survey to investigate the three most mentioned areas associated with red tape for small business, it revealed that the most often cited red tape issues were VAT (19%), PAYE and tax regulations in general.²⁵⁶

The table below illustrates the average estimated annual administrative, manpower, supervisory, and professional costs of regulatory compliance for the range of applicable state regulations as per the SBP survey.

²⁵⁶ Counting the cost of red tape for business in SA. 2005. SBP

Table 3.1 – Costs in terms of regulatory compliance

Type of regulation Mean costs	
Company registration (initial)	R 9 371
Professional fees	R 6 107
TOTAL	R 15 478
Company registration (annual)	R 6 262
Professional fees	R 3 388
TOTAL	R 9 650
Tax compliance	R 15 709
Professional fees	R 11 589
TOTAL	R 27 298
Labour and employment	R 11 735
Professional fees	R 6 557
TOTAL	R 18 292
Employment equity/empowerment	R 5 525
Professional fees	R 6 835
TOTAL	R 12 360
Additional regulations	R 18 866
Professional fees	R 3 241
TOTAL	R 22 107
Government information	R 6 389
Professional fees	R 2 283
TOTAL	R 8 672

Type of regulation Mean costs	
Local government regulations	R 5 542
Professional fees	R 1 253
TOTAL	R 6 795
Overall mean costs of compliance per firm	R 120 652
Mean recurring costs (Initial registration excluded)	R 105 174

(Source: SBP Survey, 2005)

In addition, SBP broke down the recurring compliance costs for firms into categories, indicating the percentages firms spend on average per category.

Table 3.2- Breakdown of recurring compliance costs

Local Government regulations	6%
Information to government	8%
Annual registration	9%
Employment Equity/BEE	12%
Labour and employment	17%
Sector regulations	21%
Tax compliance	26%

(Source: SBP Survey, 2004)

What is evident from the above two tables as well as the review of procedures in this document is the high compliance costs in terms of taxation. Not only does this incur financial expenditure, but it is time consuming as well. Regulatory costs clearly impact disproportionately on small firms. The average compliance costs per person employed for firms with fewer than five employees are ten times higher than for a firm with 200 to 499 employees.²⁵⁷ Tax incentives for small business in South Africa do exist, however, to be eligible for such incentives requires compliance with very narrow

²⁵⁷ Counting the cost of red tape for business in SA. 2005. SBP

definitions. Each type of tax has its own unique set of requirements for a business to qualify as an SME.

Although not exactly analogous, it is worth observing that tax on companies accounts for about 22% of our tax receipts compared to an average of about 8.8% for OECD (Organisation for Economic Co-operation and Development) countries. The maximum combined effective tax rate payable on profits, inclusive of the secondary tax on companies (STC), is 36.89% which is higher than most competitor nations. A 2004 survey by KPMG showed that South Africa's effective corporate tax rate (then 37.8%) was higher than that of India, China, Brazil, Malaysia, Chile, Peru, Vietnam, Croatia, the Dominican Republic, Panama and the Philippines. Of the 68 countries surveyed, South Africa had the 4th highest maximum effective corporate tax rate.²⁵⁸

Recommendations

In terms of the abovementioned tax compliance issues, it must be noted that SARS is currently implementing an overhaul of its tax administration. This is regulated by the tax administration Bill. Therefore, most of the salient issues regarding SME taxation are now being addressed by SARS and are summarised below.

The Tax Administration Bill was promulgated into law in Government Gazette 35491 of 4 July 2012. In terms of section 272 of the Act, the Act will come into operation on a date to be determined by the President by proclamation in the Gazette.

The Act is intended to simplify and provide greater coherence in South African tax administration law. It eliminates duplication, removes redundant requirements and aligns disparate requirements that currently exist in different tax Acts ranging in age from 4 to 63 years old. It creates a single, modern framework for the common administrative provisions of the tax Acts. Most taxpayers are compliant and the Act should ensure better service and a lower compliance cost for them. SARS is, however, duty bound to actively pursue tax evaders in order to maintain compliant taxpayers' confidence in the integrity of the tax system.

Some key features of the Act are:

- A phased move to a single registration process and number across taxes, to reduce red tape and streamline the system, and self-assessment of taxes, so taxpayers need not wait for a SARS assessment;

²⁵⁸KPMG Corporate Tax Rate Survey. January 2004

- Greater access to third party data, to underpin SARS initiatives such as the pre-population of individual tax returns;
- Clearer rules on SARS access to information, so tax liabilities can be determined more quickly and accurately;
- The ability to search business premises without a warrant in narrowly defined situations where the general requirement for a warrant would defeat the object of the search, so SARS can act when tax is at serious risk and time is of the essence;
- Clear requirements and timelines for the issue of tax clearance certificates, to provide greater certainty and responsiveness to business;
- Feedback on audit progress and findings, to engage more fully with taxpayers and ensure they understand the reasons for any adjustments;
- Specific timeframes for decisions of the Tax Board (a “small claims court” for tax) and wider reporting of Tax Court decisions, to improve access to justice; and
- The appointment of a Tax Ombud, informed by international experience, to provide taxpayers with a low cost mechanism to address administrative issues that could not be resolved through SARS’s normal channels.²⁵⁹

In terms of small business, SARS issued the following proposals:²⁶⁰

- Micro businesses (i.e. businesses with a turnover of less than R1 million) will have the option to make payments for Turnover Tax, VAT and Employees’ Tax (PAYE) only twice a year from 1 March 2012. Red tape will be reduced even further in 2013 when these businesses will be able to file only one single, combined return for all these taxes twice a year. This means that in 2013 these businesses will have to file only two returns, instead of about 18.
- To further encourage small business, the Budget provides for a number of tax breaks that will come into effect for the tax year ending on or after 1 April 2012.
 - o Firstly, the amount at which tax becomes payable for small business corporations (turnover up to R14 million) is raised from R59 750 to R63 556.
 - o Secondly, the rate at which tax is levied has been lowered from 10 per cent to 7 per cent and thirdly, the amount to which the lower tax rate applies has been raised from R300 000 to R350 000. For taxable income above R350 000, the normal corporate tax rate of 28 per cent applies.
 - o When a person over the age of 55 disposes of a small business, the amount at which no tax on capital gains is payable goes up to R1.8 million, instead of R900 000 as at

²⁵⁹ Promulgation of Tax Administration ACT, 2011. 2012.SARS News

²⁶⁰ Tax Proposals at a Glance: Budget 2012. SARS

present. Also, the maximum market value of assets allowed for a small business disposal has increased from R5 million to R10 million.

Further recommendations are to:

- Cut corporate taxes to attract foreign investment
- Simplify the tax code by decreasing the number of tax categories and types of taxation, while relying more on taxes that are simple to oversee.
- Create export processing zones where tax incentives, exemptions from profit and dividend repatriation and easier labour regulations which encourage labour-intensive manufacturing are applied.
- Defer taxes on new SMEs until they are operating efficiently, or, alternatively, the first three years.

3.4. Town Planning/land use

Zoning schemes are the regulatory framework indicating the permissible use rights for land according to zone. Depending on the zone, some business uses may operate as of right, other uses may be permitted with the consent of the municipality and certain uses would be prohibited and would entail a change in use rights or rezoning. Zoning schemes are the reference point for municipalities to enforce their regulations and therefore impact on business.

Zoning schemes vary both between and within municipalities in a number of respects. This includes types of use and requirements in terms of application procedures. These variations are as a result of the array of legislation that governs zoning schemes as well as the fact that schemes have been established by different municipalities that have now been amalgamated in terms of the new municipal demarcation process that began in the post 1994 era. Consequently different zoning schemes are, for instance, still in operation within the same municipality (e.g. there are approximately 22 zoning schemes still in force within the City of Cape Town). In general, zoning schemes can be rigid and as a consequence, some zoning schemes still reflect the old separated uses according to race, forms of business, residential and industrial practices. However, this is not in line with the dynamic nature of the business environment which tends to move towards decentralization away from city centres and towards urban areas in the suburbs. This often requires a change in the use rights of land for business use and impacts negatively on small business. Furthermore, sector specific land use policies apply to many municipalities' land use management system, ultimately affecting small business. These include policies relating to:

- Residential business (Home based industries/businesses)

- Guesthouses/accommodation facilities
- Taverns and shebeens
- Adult entertainment

Since zoning schemes can impact on SME business development, it is most significant during the implementation phase of a business. Most businesses find building permit applications to be too expensive and time consuming.

The ever-increasing number of approval processes (not just land use approval) that development applications may need to contend with has the potential to delay access to business premises. Even relatively modest applications may take years to process. Contributing to this is the long periods of time linked with the land use approval process, which is often held up by objections and appeals (in terms of planning ordinances as well as the Municipal Systems Act). Furthermore, apart from planning approval a development application may be required to submit an Environmental Impact Assessment (EIA) application or a Heritage Impact Assessment (HIA). These applications do not necessarily get processed in together, but most often consecutively. Apart from the time taken to process applications, some large capital outlays may be required to engage professional to complete and monitor these applications. Some businesses hold the view that many of these requirements, whilst intending to protect public resources are often imposed on proposals where there is either limited or no possible negative impact. The application process and related requirements remain burdensome and the approval process slow.

Of salient local consideration in this regard is that an individual must apply for rezoning, removal of restrictive title conditions, subdivisions and consolidations with the Spatial Land use Planning Division of the Free State Provincial Government, with a copy to the municipality. The municipality's approval or rejection is deemed as comments on the application by the Free State Township Board. The application forms are obtainable from the Free State Provincial Government. However, at a recent public hearing on the Spatial Planning and Land Use management Bill, it was pointed out that in the Free State there were no town planning schemes. Even some of the former predominantly white built-up areas were not governed by a town planning scheme and none of the former predominantly black areas or farmlands were subject to a town planning scheme. The Free State had also never had proper planning legislation. The Bill was compelling the Free State to have its own provincial legislation. The major challenge being faced by the Free State was in relation to capacity and everything was needed at municipalities. The municipalities in Free State did not know how to process the applications. There were only four municipalities in the province with town planners and

these town planners were few and inexperienced. The reality therefore was that the Free State was going into a total new era with the introduction of the Bill.²⁶¹

Recommendations

Town planning requires streamlined procedures and quick turnaround times to effectively implement re-zoning. It is also recommended that the Province obtains effective land use management legislation, as envisaged by the new Spatial Planning and Land Use management Bill. Increased capacity building and skills development is essential in this regard, as well as the appointment of skilled and knowledgeable Town Planners. In line with recent thinking around closer integration between forward planning (embodied by Spatial Development Frameworks) and land use management decision making (especially dealing with zoning which is not in line with the forward plan), it is proposed that means be investigated to ease the burden of land use applications on SMEs.

Areas that could be investigated include:

- Mechanisms to implement 'blanket rezoning or consents' in areas where a forward plan may propose business use. This would effectively avoid the need for SMEs to seek land use approval when developing in 'business areas' as indicated by the forward plan.
- Mechanisms to avoid the lapsing of land use rights in areas where a forward plan is clear around business use in an area.
- Alternative means of administering regulation could be researched. The idea of shifting control over neighbourhood planning issues from urban authorities to neighbourhood groups has been suggested as a means to regulate home based enterprises in low-income areas. 'Neighbourhood councils' could become development control agents and arbitrators in disputes ensuring that locally sensitive judgements can be arrived at. This may be a solution to addressing locally contentious uses such as taverns and shebeens.²⁶²
- Mechanisms to reduce bureaucratic burden of acquiring correct documentation for land development.
- The appointment of more technically skilled staff within town planning and engineering fields.
- It is also recommended that the speed of the re-zoning process be improved.
- Lower transfer costs on property transactions can entice new business owners to obtain business premises at reasonable costs.

²⁶¹Spatial Planning and Land Use Management Bill [B14-2012]: public hearings day 2

²⁶²Impact of Municipal regulations on SMMs. 2006 Development Policy Research Unit: UCT

3.5. Business Licensing

Licensing requirements and procedures have been discussed extensively in this document. A number of areas within municipalities may have an input into the granting of a business licence including town planning (related to zoning and potentially building regulation), environmental health and community safety (health requirements) and disaster management (fire regulations, etc.).

This may entail inspections by various authorities. Licensing may include the following authorities:

- The Planning Department of the local authority
- Health and Environmental Department
- The Fire Department
- SAPS (South African Police Services)
- National Liquor Board
- Legal authorities

Time for applications to be completed range from 2 days (if the zoning is correct and the business complies), and could be extended to almost 18 months, depending on legal processes such as appeals. The time frame is also impacted by the distance between municipal offices and other licensing authorities as each authority works with the original documentation and thus electronic systems are ineffective communication methods. Therefore, the process could still extend the business licensing procedure.

In terms of complying with regulations, there are a number of costs incurred by SMEs. Some typical costs involved are:

- Application fees for building plans and zoning, which could cost up to R2000
 - Up to 1 per cent x sqm (square metres) levies on building costs
 - Capital contribution for bulk services which could cost up to R35 000
 - Professional fees for consultants – business plans which could cost up to R30 000
 - Time as cost factor for waiting on approvals.
 - In terms of hawkers, some municipal stands in strategic areas could cost up to R100/month and in some instances this is doubled in December during peak tourist periods.
- (These are generic figures as each municipality's rates will differ).

Recommendations

Lower Fees and increased assistance: The administrative fees for business registration are comparatively low. For township SMEs, public sector assistance with the preparation of business plans needs to be increased further. The SME Service centre for Mangaung is a good example of such a business assistance entity. Faster turnaround times for approval processes should be aimed for when issuing business licenses.

Resilient Management: Government Departments and similar licensing authorities should co-ordinate and liaise with support organisations such as Business support agencies. Support centres, which provide training and support in terms of starting up of small business, should also make aspiring business owners cognisant of the regulations involved as well as any incentives that could be provided.

De-centralisation of services: Satellite municipal facilities in disadvantaged communities, which are located far from centralised services, could lessen the transport cost burden that entrepreneurs incur when applying for business licensing and other services. In places where provincial or national support initiatives such as RED Door have been established, resources could be pooled.

Awareness education: Some SMEs fail to comply as a result of saving on extra, unnecessary costs that could be incurred. However, this perception could be altered if SMEs were more aware of the benefits they could be offered by marketing strategies and incentives provided by local authorities and institutions.

3.6. Environmental Policies

Environmental Statutes in South Africa is fragmented. The relevant competent authorities that deal with water resource management include, amongst others, DWAF, DEAT, DME, Department of Agriculture, and the Department of Health. There is, for example, no single, integrated act that regulates land, air, water and noise pollution in an integrated fashion. Instead, the regulatory framework for pollution consists of a multitude of acts. Developing countries, such as South Africa inherited fragmented policies. Furthermore, South Africa does not have a lead agent responsible for environmental matters. This results in duplications of legislation, with different departments focusing on environmental legislation. This creates costly delays and conflicting decisions.²⁶³

Recommendations

²⁶³Improving Unsustainable Environmental Governance In South Africa: The Case For Holistic Governance. 2006. L.J Kotze.

Reforms in this regard must specifically focus on integrating fragmented legislation regulatory tools, processes and procedures in terms of legislation; and fragmented institutional and administrative structures, processes and procedures.

A further recommendation is the integration of Policies via an environmental Governance Act establishing a single entity dealing with environmental regulations. Such an entity will facilitate consultation and support for all relevant stakeholders. The promotion of energy saving solutions in business areas will also alleviate the energy burden on SMEs.

3.7. Construction regulations

The construction of housing process is marred by bureaucratic delays in the form of new legislation and regulations, particularly the National Environmental Management Act, and authorisation has become a tedious process due to unnecessary duplication of policy processes. Technical feasibility studies need to be conducted. The technical study entails a geological analysis of the land, soil condition tests, ground water table analysis and slope analysis. Environmental feasibility studies are also conducted to ensure that the project does not have a negative impact to the vegetation and animals, like destroying endangered species. An EIA Certificate is issued by the Department of Environment as authorisation that confirms that the project is environmentally acceptable. It is illegal to implement the project without an EIA certificate. Therefore, it is an obligation for township establishment to wait until this process is complete. Currently, some of the policies and processes related to housing development create unnecessary delays and bottlenecks, for example, lengthy EIAs and slow, complex land development processes (approval and subdivision). Apart from provincial and local government policies and processes, there are some policies and processes from institutions (such as the NHBRC) that also create delays.²⁶⁴

Recommendations

It is essential to review the time schedule planned for the pre-construction activities, such as the feasibility studies. The entire process of feasibility study, environmental impact assessment studies and constructing a house should take approximately four months, but currently it can take up to a year. The site servicing processes take far longer than is generally necessary. Environmental impact assessments can also be streamlined by a more effective regulatory body (see 4.6 on environmental requirements).

²⁶⁴ Red tape and its Effect on the Housing Process. T. Mabula.

3.8. Labour Regulations

Labour regulations are regarded as the fourth most significant constraint to business growth. The Bureau of Economic Research Survey (2006)²⁶⁵ found that labour regulations were the number one constraint to business growth. In the survey, 45% of respondents found labour regulations to have a serious or debilitating constraining influence on their business activity. In addition, the BER Survey identified sectoral differences in the ranking of labour regulations as a growth constraint. Comparing the ranking of growth constraints by firms in the services and construction sectors, for example, the survey found that labour regulations are the number one constraint for construction firms (and third constraint for service sector firms) and electricity supply is the main constraint for service sector firms.

3.9. Customs and excise

Another factor that influences SMEs in their ease of doing business is the simplicity and cost of exporting to foreign markets. The Southern Africa Investment Climate Survey²⁶⁶ identified customs regulations, procedures, and bureaucracy as the fourth most important business constraint. The World Bank Doing Business Survey²⁶⁷ revealed that importation time-frames are more heavily influenced by procedures and documentation, than infrastructure issues.

On average, the two stages that require “hard infrastructure” such as ports and inland transport account for only a quarter of the time in the import process. The preparation of pre-arrival documents accounts for more than half the time spent on import compliance.

3.10. Miscellaneous Requirements

There are various other regulations stipulated by municipalities which have an impact on SMEs. These include:

- Detailed parking regulations and requirements
- Advertising and signage regulations
- Building Regulations (established in terms of the National Building Regulations and Building Standards Act (No. 103 of 1977))

²⁶⁵Bureau of Economic Research. 2006. SA Economic Growth Constraints: Results from a BER Survey.

²⁶⁶Southern African Development Community and GTZ (2006): *Business Climate Survey Summary of Results for the SADC Region*.

²⁶⁷World Bank (2006): *Doing Business: Global Comparison of Business Regulations*

- Air Pollution Regulations (in terms of the National Environmental Management: Air Quality Act, (No. 39 of 2004)
- Municipal property regulation such as by-laws, which may relate to the leasing of public land (e.g. by informal markets)
- Regulations and policy around infrastructure provision
- Sector-specific land use policies
- Liquor licensing procedures
- Restraints in terms of outdoor signage.

Recommendations:

While it is important to have a regulatory framework to protect public interest and prevent corruption, it is proposed that the simplification of laws and the alignment of various department towards an integrated SME policy will ensure greater uptake within the business sector of SME initiatives. In this regard, it is envisioned that a single regulatory access and application point at One-Stop Shops for Small Business Development is developed. With such a system, potential entrepreneurs, with the help of trained vanguard small business development consultants, could then make all required applications at different government departments and government spheres in a single step. By aligning these different aspects and integrating them across the relevant departments, it will be possible to eliminate the duplication of procedures and applications. This will also significantly reduce costs in applying for business registration as all duplication is eliminated and the registration function is centralised. It is also proposed that many of these procedures be made available online with an integrated web portal attending to small business exclusively. Such a portal would be a joint project of SARS, the Department of Trade and Industry, the Department of Labour and Local Government. Once information is uploaded it is instantly available to all departments in the registration procedure.

There is also a salient need for Government and business to engage in dialogue by creating local government and business interfaces. The promotion of Public-Private Dialogue enhances mutual understanding and assists in building trust relationships. Such partnerships have the advantage of being able to lobby higher government structures to amend or repeal laws. On local government's side, it brings service provision, knowledge of the systems, as well as the necessary resources to reduce red tape. Business brings job creation, revenue, its resources and first-hand knowledge of red tape hindrances to the table.

In conclusion, there are various areas of red tape within the Province which hinders the promotion and growth of SMEs. Some recommendations for the solution to these problems were given in this

section. Additionally, it is suggested that the Province, as well as local Municipalities adopt the following suggestions in order to streamline the bureaucratic system and eliminate red tape.

These recommendations are:

- Introduce Regulatory Framework Review and Red Tape Reduction Process with the private sector to identify certain problem areas or business processes and develop appropriate solutions.
- Develop Services Charter which specifies clear time-frames within which service will be delivered and decisions will be made, for example for land purchases, building plan approval etc.
- Investigate internet and electronic solutions to business processes to reduce bureaucratic burdens.

3.11. A Regulatory Framework Review²⁶⁸

As mentioned in 3.9, it is suggested that Local Municipalities or the Province as a whole adopt a Regulatory Framework review to identify the main salient problems regarding red tape in the SME environment. Below is a summary of the main characteristics of such a framework and the role players involved in a red tape reduction process.

3.11.1. A Local Host

When setting up a regulatory framework to investigate how to reduce red tape, it is advisable to appoint a local host. The local host usually provides the funding and financial resources. Even in instances where primary funding is not obtained from the host; he/she still provides a commitment in terms of knowledge and time. The host's role is collegiate in nature, i.e. an institutional organisation involved in all crucial steps and decisions. The local host gives credibility to the process. There may be more than one local host, such as the local government, together with the local business chamber.

3.11.2. Local Stakeholders

It is crucial to involve a wide range of stakeholders on a consultative basis. Private, public and civil society sectors need to be consulted to obtain the relevant information and create broad commitment to the red tape reduction process. It must be noted that although the consultative participation is of high value, it does not necessarily imply participation in the decision and

²⁶⁸Local Red Tape Reduction to improve the Business Climate. 2006. Gtz. A.Rucker & M. Wegmann

implementation phases. Consultation is essential as, without such consultation of the private sector (who primarily has the most reliable info on red tape), the process will be ineffective.

3.11.3. Local Champions

Local stakeholders should become champions by taking advancing an identified red tape issue. They are responsible to bring the issue to the fore, where red tape has become smart tape. Local champions thereby learn on the job how to reduce local red tape. They are the key to a successful red tape reduction process, since they create the ownership to sustain the process over extended periods. Preferably, local champions should be recruited from the private and the public sector. Utilizing the potential of a team of local champions leads to collaboration and conceptualization of the process, as well as, to a certain extent, decision making.

3.11.4. Local Decision Makers

The aim of red tape reduction is to ease and improve upon regulatory constraints in the public sector. These regulations are often highly technical and complex administration processes with diverse sources and departments involved. This requires the involvement of technical and political decision makers, such as heads of departments, municipal managers and counsellors. Proposals for red tape reduction should be handed over to the local decisions makers for evaluation to provide specific solutions to the benefit of the public, as they are informed about the formal administrative and political channels required to implement solutions.

3.11.5. An external Facilitator

The facilitator's job is one of organization and management, facilitating the interaction process of the different stakeholders. One must note that the facilitator's role should not only be one of consultant, who does a desktop survey, but rather a co-ordinator, who through the good technical knowledge and skills at his disposal, co-ordinates a participatory approach. He or she takes responsibility for steering the process, involving the right stakeholders and creating an effective group. He/she must utilise his/her expertise to link the local context with external knowledge and good practice gained in his/her experience.

Some of the important factors to keep in mind when creating a red tape reduction framework are:

- The principal of competitiveness. Business wants to cut red tape to reduce the cost of doing business. Increasing the competitiveness aims to make a municipality more competitive than others. Supporting the development of local solutions which are suited to the specific area, which make the area unique in its business-friendliness and which can be promoted in competition to other areas is therefore an important element.
- Red tape reduction is a step-by-step process. New steps can only be defined once previous steps are concluded. This requires flexible planning, as sometimes these will not be quick and

easy answers. This is also more advisable as large scale instant changes may be perceived as a threat by some role players in the local economy.

- Participation is key to red tape reduction success. Only through participation is it ensured that the right local solutions are found. By working together, public and private sectors build mutual trust.
- The public sector must show interest and openness to buy into a process which promotes the critical analysis of present practices.
- Resources in time and money must be made available from different stakeholder groups.
- The facilitator needs a good knowledge and understanding of the locality, its institutions, stakeholders and issues.
- Given these prerequisites, stand-alone versions are often found in rather advanced local contexts with a strong culture and history of public-private dialogue and well-developed institutions to manage it. In less potential Local Economic Development (LED) contexts, it is suggested that red tape reduction is built into a broader and longer-term LED process.

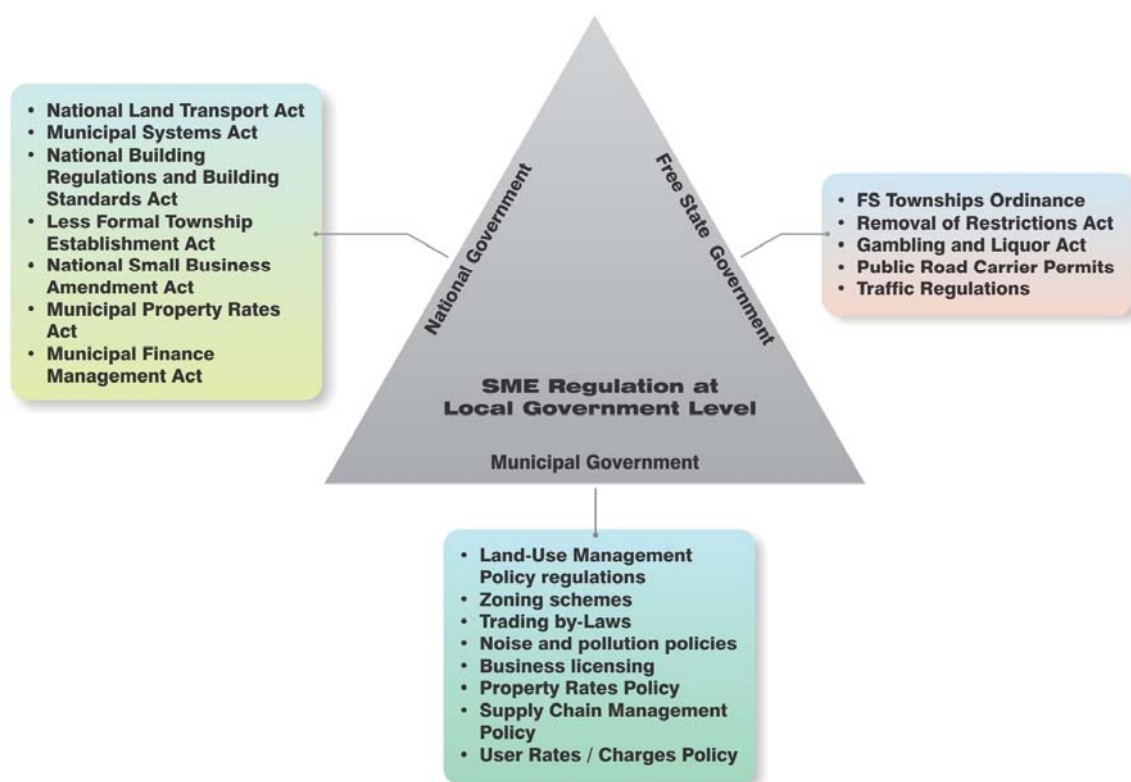


Section Four: Free State SME Regulatory Procedures

The SME development landscape in South Africa is regarded as challenging. Among the identified factors that inhibit SME growth are inadequate business support services, inadequate access to finance and poor quality or absence of business premises or infrastructure. Much of the challenges relating to SME development fall within the ambit of Local Government and include aspects such as registration procedures, business premises, infrastructure as well as rates and taxes.

The purpose of this section is to focus on SME registration procedures, regulatory constraints and investment incentives at local government level (i.e. Free State and Municipal requirements). Diagram 3.1 provides an illustration of the SME regulatory environment at local level.

Diagram 4.1 – SME Regulatory Environment at Local Government Level



The contribution of Local Government in the Free State to these factors varies and may be direct or indirect. The legislative mandate and powers of Local Government is based on National Legislation and Policies. The Constitution does, however, provide a level of regulatory independence for Local Government in South Africa. For example, Municipalities are not allowed to advance loans to SMEs but efficient business licensing and registration could facilitate access to private loans for small business. Similarly, the Free State Provincial Government could process gambling and liquor

applications more efficiently. Municipalities also have the independent right to regulate (i.e. approve or disapprove) land-use applications for development. The conclusion here is that while SME Development Policy falls mainly in the sphere of National Government, there are many elements at Provincial and Local Level that create or hinder the business environment in which SMEs operate.

4.1. The Legislative Framework Provided by National Government

National legislation that provides the framework in which Provinces and Municipalities regulate the SME business environment includes:

4.1.1. The National Land Transport Act (No. 5 of 2009)

In terms of this Act the Free State Province is responsible for the formulation of Provincial transport policy and strategy, within the framework of the National policy and strategy; planning, co-ordination and facilitation of land transport functions in the Province, and preparing the Provincial Land Transport Framework in terms of section 35 of the National Land Transport Act.

At Municipal level the Act drives the preparation of an Integrated Transport Plan which must align with the IDP. The Act focusses on the integration of land-use and transport planning. In terms of the Act, a Municipality is responsible for the preparation of transport policy and plans, financial planning and the implementation and management of intermodal transport networks. Transport planning in this context plays a central role to facilitate a more open trade and investment environment for SMEs. In Mangaung and Matjhabeng public transport is broadly regarded as inadequate and expensive for passengers traveling to-and-from work on a daily basis. Neither of these Municipalities provides public transport facilities for tourists (although visitors may make use of public busses and private taxi companies). While Mangaung has identified several tourism routes throughout the Metro, they are not well marketed, indicated (with road signs) or supported by tourism operators. Investment in transport infrastructure plays a significant role in the competitiveness of SMEs in the context of passenger transport (workers and tourists), cargo transport and access to markets. Road surfaces in the Free State are generally in poor condition. While the quality of roads within the city of Bloemfontein and in Welkom is generally adequate, regional roads linking these two areas are not. Previous studies have indicated that a significant amount of the foreign aid received by Lesotho is eventually spent in Mangaung (up to 50%). Good road transport infrastructure is thus of strategic importance to small businesses along to N8 corridor which included Botshabelo and Thaba Nchu.

Implications for SMEs:

- While the Municipal Transport Plan does not reflect any specific or regulatory procedures for SMEs, businesses should take note of the strategic direction of transport planning in the city and its surrounding regions.
- Businesses with a significant passenger or cargo transportation component should especially be cognisant of specific elements in transport policy such as tourism routes, inter-modal nodes and airports (whether existing or planned).
- The quality of paved roads is a major concern for businesses in the Free State which will factor into the decision for location. This so in terms of customer accessibility, perceived safety (vehicles and people), the cost of transport for workers (is the business located near a public transport stop), the cost of transporting goods/cargo to and from the business and access to ports (i.e. air, rail and paved roads).
- Transport Policy at the Municipal level has a significant impact on the economy and the decision for SMEs to invest. From a small business perspective issues such as site visibility, ease of customer access (e.g. off-ramps, parking and access roads) and the location to passenger transport nodes (such as bus terminals and taxi ranks) all factor into an enabling business environment.

4.1.2. The Municipal Systems Act (No. 32 of 2000)

The Municipal Systems Act sets out the categories of Municipalities in South Africa as well as their powers and functions. It sets out a framework for municipal planning, performance management, service tariffs and credit control policies while taking the needs of the poor into account and promoting public participation in local governance. The Act provides Municipalities with certain executive and legislative powers which include the proclamation of by-laws for their areas. The Act also requires Municipalities to draw up integrated development plans (IDPs) for the upliftment of their areas.

As part of their compliance with the legislation, many Municipalities compiled Local Economic Development Strategies (LEDs). These Strategies would typically outline a local approach to SME development and provide a set of recommendations, projects or programmes for the Municipality that promotes and facilitates small business development in the area. It has also become standard practice to constitute a LED Forum represented by members of the local business sector and the Municipality. The purpose of the LED Forum is to address issues that affect local businesses, implement LED projects and facilitate new investment in the area.

Both Mangaung MM and Matjhabeng LM have adopted Local Economic Development Strategies in the past which is currently regarded as outdated. In 2008/9 the National Department of Trade and

Industry (dti) assisted the Lejweleputswa District Municipality to compile a LED Strategy for the District (through the Project Khulis Umnotho Programme). As part of this programme an LED Forum was established in Welkom (represented by local business owners and Municipal officials). In Mangaung the BCCI fulfils this role.

Implications for SMEs:

- The Municipal Systems Act does not reflect any specific or regulatory procedures for SMEs. The Act does, however, provide the legislative framework for Municipal powers and functions that may have an impact on small business registration and development (such as by-laws).
- SMEs and entrepreneurs should take cognisance of the Local Economic Development Strategies in Mangaung and Matjhabeng. These LED Strategies highlight specific opportunities for investment within these municipal areas that are supported by the respective Municipal Councils (the LEDs have been adopted by these Councils). The Strategies also reflect potential constraints to investment as well as location advantages and disadvantages which SMEs should be aware of.
- Since Municipal government is not legally permitted to register and run private businesses, the LED Forum is seen as vehicle through which private-sector LED projects are implemented. It is thus advisable for entrepreneurs and SMEs to participate in the LED Forum (in Matjhabeng) or the BCCI (in Mangaung).
- To support LED and small business development, the Lejweleputswa District Municipality has registered a Development Agency. The Lejweleputswa Development Agency (LDA) is seen as an important SME support institution in the entrepreneurial space in Matjhabeng (the LDA's office is located in Welkom). The LDA identifies projects that will create employment opportunities in the area and may provide several investment and support opportunities for SMEs (e.g. partnering, investment, identification of a business location, partnering with larger businesses, identification of funding sources, SME incubation programmes, etc.).

4.1.3. National Building Regulations and Standards (No. 103 of 1977)

The National Building Regulations and Building Standards Act form the basis of how buildings in South Africa should be constructed and developed to suit human habitation. The legislation became enforceable as law in September 1985, and two years later were published by the SABS as part of the original Code of Practice. The intention of the Act and the SABS regulations is to promote uniformity in the law relating to the erection of buildings in the areas of jurisdiction of local authorities; for the prescribing of building standards; and for matters connected therewith.

Over the years several amendments were made to the Act and the SABS codes of practice. The most recent amendment to the Act was made in 2011 by the Department of Trade and Industry. The new regulations stipulate that all new commercial and residential buildings will have to receive at least 50% of its hot water requirements from renewable energy sources such as solar water heating. The regulation also stipulates that buildings should be designed with the region's climate in mind to prevent the use of extra energy to heat or cool the building.

Property owners are required to submit building plans to the Local Authority for approval (when new buildings are erected or when building additions/modifications/alterations are made).

Implications for SMEs:

- The National Building Regulations and Standards apply to the construction and alterations of all buildings in South Africa, which include buildings for SMEs.
- Business owners who intend to construct new buildings or make alterations to existing structures must submit building plans to the Municipality for approval. This may have an impact on the property rates and taxes payable by the SME to the Municipality. It may also imply that the property owner should submit a re-zoning application in terms of the Town Planning Scheme, apply for consent-use or make a contribution to the construction of new or improved municipal infrastructure.
- In terms of the Act, SME owners should take note of the 2011 amendment by the dti, which implies the addition of renewable energy technologies to building construction (such as solar panels and heat pumps). Such additions may increase initial investment requirements for SMEs and entrepreneurs.

4.1.4. Less Formal Township Establishment Act (No. 113 of 1991)

The Less Formal Township Establishment Act provides for shortened procedures for the designation, provision and development of land, and the establishment of townships, for less formal forms of residential settlement; to regulate the use of land by tribal communities for communal forms of residential settlement; and to provide for matters connected therewith. The main implications of the Act for SMEs are fewer restrictions in terms of town planning regulations as well as national building regulations and standards.

Implications for SMEs:

- The Less Formal Township Establishment Act does not provide regulations that are directly applicable to SMEs.
- Small businesses that operate in townships established in terms of this Act, are less bound by town planning regulations and national building standards.

4.1.5. National Small Business Amendment Act (No. 29 of 2004)

The main implication of the Small Business Act for SMEs at local level was the establishment of the Small Enterprise Development Agency (SEDA). SEDA was established to provide direct support to small businesses and entrepreneurs through a network of SEDA offices across South Africa. In the Free State, the FDC is seeking much closer cooperation with SEDA to provide SME support services (with reference to scaling back its current business support services).

Implications for SMEs:

- SEDA has regional offices throughout the Free State, including Bloemfontein and Welkom.
- SEDA provides a range of business support services which includes business plan development, BBE, export promotion, support with marketing, facilitating access to small business financing and technology adoption programmes.

4.1.6. Municipal Property Rates Act (No. 6 of 2004)

The purpose of the Municipal Property Rates Act is to regulate the power of a Municipality to impose rates on property; to exclude certain properties from rating in the national interest; to make provision for Municipalities to implement a transparent and fair system of exemptions, reductions and rebates through their rating policies; to make provision for fair and equitable valuation methods of properties; and to make provision for an objections and appeals process.

According to section 19 of the Act, Municipalities may determine a set of criteria whereby it can set out different rates and levies for different categories of rateable property. In South Africa, Municipalities sometimes use this mechanism to provide investment incentives for business. This can be done in terms of rate holidays or reduced rates for targeted growth sectors (such as manufacturing). Mangaung and Matjhabeng do not currently make use of such incentives for SME development. Municipalities may also apply reduced rates to the provision of water (in accordance with the Water Services Act) and electricity (in accordance with the Electricity Act) to attract investment or even make municipal-owned property available at reduced rates (or sale prices).

Implications for SMEs:

- SMEs must be aware of the rates and levies applicable by the Local Municipality.
- It is strongly recommended that Municipalities in the Free State use this mechanism to attract SME investment to targeted sectors.

4.1.7. Municipal Finance Management Act (No. 56 of 2003)

The Municipal Finance Management Act (MFMA) provides the legal framework for financial organisation and administration by government. It sets out the regulations for local government (i.e. what a Municipality may and may not do with its money) and budgetary reporting requirements. In essence a Municipality may raise income in terms of local rates and levies (such as property rates, water & electricity rates, traffic fines etc.) and use this income to implement its core functions (i.e. providing municipal services such as utilities, physical infrastructure, waste management etc.).

The MFMA, the Preferential Procurement Policy Act (2000) and National Treasury regulations all have an impact on the SME business environment. This is mainly so in reference to the procurement practices of government. The legislation facilitates the creation of Supply Chain Management Policies at local government which sets out “qualifying criteria” from procuring goods and services. SMEs with a high BBBEE certificate rating, for example, would score more points in terms of this system. Other rating criteria commonly applied by Municipalities include price, being a local business, being a small business and experience in providing the goods or service.

Implications for SMEs:

- The MFMA is not directly applicable to SMEs but small businesses must be aware of its regulations placed on Local Government. A Municipality is not allowed to register and fund private sector businesses directly or be a shareholder in a private company. The only exception to this rule is in the case of cooperatives where a Municipality is allowed to provide direct financial support (but not to hold shares – it must be a donation). This is, however, very uncommon and it has become standard practice for Municipalities to rather go out on tender and supply cooperatives with capital equipment (such tractors and tools).
- To provide more direct assistance to SMEs a Municipality is allowed to establish a Municipal Development Agency. Such an Agency may enter into PPP agreements with private businesses and hold equity (as a financial support mechanism). Municipal Councillors are not allowed to serve as Board Members of Development Agency. In the Free State, the Lejweleputswa and the Thabo Mofutsanyane DMs have registered Development Agencies.
- It is also advisable that SMEs register on the Supply Chain databases of local government (i.e. Local, District, Provincial & Development Agencies). Unfortunately, there is no central supply chain database available since each government entity has the right to determine their own Supply Chain Policy (with criteria). It has thus become common practice for SMEs to complete the registrations forms of the particular government entity each time they submit a quote to provide goods or services. It should also be kept in mind that these entities amend their Supply Chain requirements and forms from time to time which highlights the

need to complete the full set of paperwork every time a quote is submitted (to be on the safe side). To complicate matters further, some government entities have “Preferential Supplier Databases” or “Supplier Rosters”. Such a database is used by the government entity to quickly request quotes from a shortlist of suppliers (a speedier process than going through the full tender procedure).

4.2. Free State SME Registration & Regulatory Procedures

4.2.1. FS Townships Ordinance (No. 9 of 1969)

The purpose of the Free State Townships Ordinance is to regulate the establishment of townships, the planning of towns and related matters (such as re-zoning applications, subdivision of erven, adopting a township scheme etc.). The Townships Ordinance is currently the only legislation in the Free State that provides the regulatory procedures with reference to these aspects after the Development Facilitation Act of 1996 (national legislation providing alternative town planning procedures) have been declared unconstitutional by the courts. The National Constitution and the Ordinance highlights the independence of Municipalities to regulate, plan and make decisions (i.e. approve or disapprove property development applications) with regards to spatial planning and land development.

Implications for SMEs:

- Any land or property envisioned for business use must be appropriately re-zoned for the particular business use.
- Property re-zoning procedures for business use can be complex, expensive and may take several months for a decision. A municipal requirement that applicants make a monetary contribution for the upgrade or implementation of new infrastructure is not uncommon.
- Business development in many Free State towns is constrained by a lack of available (and serviced) business and industrial plots. This situation calls for business growth orientated spatial planning and municipal investment in infrastructure.

4.2.2. Gambling & Liquor Act (No. 6 of 2010)

The purpose of the Free State Gambling & Liquor Act is to provide for control over gambling and liquor; and to provide for matters incidental thereto. It is a legal requirement under the Act to obtain a licence for the sale and supply of liquor and to provide facilities for gambling to the public. The main objectives of the Act are to:

- Reduce the socio-economic and other costs related to alcohol abuse.
- Promote the development of a responsible and sustainable liquor industry.
- Implement national norms and standards in the gambling industry as determined by the National Gambling Act.

- Gambling generates revenue for the Province.
- To ensure that –
 - gambling activities are effectively regulated, licenced, controlled and policed;
 - members of the public who participate in any licenced gambling activity are protected;
 - society and the economy are protected against over-stimulation of the latent demand for gambling; and
 - the licensing of gambling activities is transparent, fair and equitable;

Implications for SMEs:

- The Act applies to all retail sale, consumption and micro-manufacturing of liquor or methylated spirits; and gambling conducted in the Free State.
- Any SME who intends to provide liquor and/or facilitate gambling (as defined by the Act) must apply for the appropriate licence(s) from the Free State Gambling and Liquor Authority. The Authority may consider, grant or refuse such applications. The Authority may also cancel, suspend, vary, renew or revoke a licence or registration approved previously.
- Liquor licenses are valid for 10 years but applicants are allowed to apply for new licences prior to lapsing. Gambling licences must be renewed annually.
- A registered business (in terms of having a liquor license) may not employ a person who has not yet attained the age of 16 in any activity relating to the micro-manufacturing or retail sale of liquor or methylated spirits unless the employee is undergoing training or a learnership contemplated in section 16 of the Skills Development Act, 1998 (Act No. 97 of 1998).
- A business is not allowed to provide any employee with liquor as a form of payment or inducement (or deduct any monies from an employee's wages for liquor acquired from the business).
- A business may not advertise liquor in a manner that is misleading or targeted at minors (i.e. school going children). A business may also not advertise any substance as liquor which has not been deemed (or classified) as such in terms of the Act.
- Businesses are not allowed to supply liquor to minors or school going learners. Businesses must also take reasonable measures to determine accurately whether or not a person is a minor or school going learner. A minor (or anybody else) may not make a false claim about his/her age in order to obtain liquor or supply any other minors with liquor.
- Businesses that have successfully applied for a liquor licence must provide reasonable accesses to the South African Police Services for purposes of inspection. A business must

clearly display a valid certificate of registration at the premises as proof of having a liquor licence (obtained from the Free State Gambling and Liquor Authority upon successful application). A business may apply for any of the following registration certificates:

- o Certificates that apply to businesses where liquor will be **consumed on the premises** -
 - Accommodation establishment registration certificate;
 - Restaurant registration certificate;
 - Club registration certificate;
 - Tavern registration certificate;
 - Special events registration certificate;
 - Gambling registration certificate; or
 - Night club registration certificate.
- o Certificates that apply to businesses where liquor will be **consumed off the premises** -
 - Liquor store registration certificate;
 - Grocer's wine registration certificate;
 - Micro-manufacturer of liquor registration certificate;
 - Sale of methylated spirits registration certificate;
 - Micro-manufacturer of methylated spirits registration certificate; or
 - Special events registration certificate.
- Business holders of on-the-premises certificates must ensure that any liquor sold are consumed on the registered premises only.
- Business holders of the off-site certificate must ensure that no liquor is consumed on the registered premises.
- The holder of the restaurant registration certificate must only sell liquor to a person taking a meal purchased on the registered premises.
- In terms of gambling, the Free State Gambling and Liquor Authority may grant the following licences:
 - o casino licences;
 - o limited gambling machine operator licences;
 - o limited gambling machine site licences;
 - o bingo operator licences;
 - o manufacturer, maintenance or supplier licences;
 - o totalizator licences;
 - o bookmaker licences;

- race-meeting licences.
- Any business, desiring to operate, carry on or conduct any form of manufacturing, selling, distribution, import, marketing, maintenance or repair of any gambling device must apply to the Authority for the relevant licence.
- Businesses with a gambling licence or employee of such a licence holder may not knowingly allow a person who is registered as an excluded person in the national register for excluded persons, as contemplated in the National Gambling Act, to enter or remain in a designated area within the licensed premises or to participate in any gambling activity on the licensed premises.
- Businesses that provide gambling facilities to the public must make available:
 - the form prescribed in terms of the National Gambling Act to be used by persons wishing to register as an excluded person;
 - A directory of locally recognised counselling, treatment or education services addressing the problems of compulsive and addictive gambling;
 - Prominently post a notice of the above.
- Gambling advertising may not be targeted at minors (under the age of 18) or in close vicinity of any school or other institution or place where persons under the age of 18 years are the dominant frequenters.
- All advertising related to gambling must include a warning against the dangers of addictive and compulsive gambling (in accordance with the National Act).
- All rules (for games) must at all times be available where any such game is played and be produced to any player on demand. Where game rules have not been published by the Authority, the licence holder must make rules and submit them to the Authority for approval.
- No person may be employed in any business relating to gambling if such a person is not the holder of a certificate of approval issued by the Authority. Such certificates must be renewed annually.
- No employee of a gambling business may participate in or play any gambling game or solicit any tip, gratuity, consideration, or other benefit from any player or customer.

4.2.3. Free State Provincial Road Act (No. 2 of 1998) and Road Permit Regulations

The purpose of the Free State Provincial Road Act is to provide the legislative framework for vehicle licensing, vehicle registration and regulations. The Act also gives Municipalities the power to enact by-laws that reflect local vehicle and traffic matters (such as parking, traffic fines, vehicle weight regulations etc.). Road Permit Regulations describe the various types of road carrier permits and the application procedures applicable.

Implications for SMEs:

- The Act and Regulations provide the regulatory framework for businesses vehicles and their transport of passengers and cargo.
- Before a business is allowed to carry public passengers, it must apply for a road carrier permit with the Road Transportation Board. As part of this application, the business must provide the following information:
 - the number and type of vehicles
 - the carrying capacity of the vehicle(s)
 - the mass of the vehicle(s)
 - the nature of the road transportation or proposed road transportation
 - the points between or the route or routes along or the area or areas within which the road transportation will be conducted
- The regulations provide a proposed list of mini-bus taxi routes and taxi-ranks in the Free State along with operating conditions.
- The regulations provide a proposed list of metered-taxi routes and geographic points/nodes/areas along with operating conditions.
- The Act, subject to the provisions of the Small Business Act, allows Municipalities to enact by-laws that regulate the carrying on of business of street vendors, hawkers, etc. (such as specifying trade hours/time). In terms of the Act, Municipalities also have the right to enact by-laws that regulate parking of any vehicle on any public road as well as the installation and operation of parking metres.

4.2.4. Free State Bed and Breakfast and Guest House standard By-Law (No. 170 of 2011)

The purpose of the Free State Bed and Breakfast and Guest House standard By-Law is to provide a standardised regulatory framework for operating these facilities across the Province. The By-Law also underlines compliance with the following legislation:

- the National Building Regulations and Building Standards Act, 1977 (Act No. 103 of 1977) where all buildings constructed on the premises must comply with this Act and its regulations;
- the Council's applicable Town Planning Scheme with specific reference to parking, floor area ratio, height, coverage and zoning, number or rooms, if prescribed by a Town Planning Scheme applicable to the area where the property is located and with Council's Outdoor Advertising Bylaws with reference to signage.
- the Foodstuffs, Cosmetics and Disinfectants Act, 1972 (Act No. 54 of 1972) and the Regulations governing general hygiene requirements for food premises and the transport of

food, formulated under the Health Act, 1977 (Act No. 63 of 1977), where a Certificate of Acceptability must be obtained from the Council's Senior Health Inspector.

- the Broadcasting Act, 1999 (Act No. 4 of 1999) if the lettable room is supplied with a television set;
- the South African Music Rights Organisation (SAMRO) where a licence is required if background music is to be played to the guests;
- the Free State Gambling and Liquor Act, 2010, (Act No. 6 of 2010) if liquor, including complimentary drinks, are served to guests;
- the Tobacco Products Control Act, 1993 (Act No. 83 of 1993) where it is a requirement that signs are displayed in areas designated for smoking and no -smoking signs are displayed elsewhere.

Implications for SMEs:

- A person/business who wants to operate a bed and breakfast or guest house facility must apply to the local Council/Municipality in writing. If the Municipality approves, it will provide the applicant with a Letter of Special Consent. The applicant must also apply for and obtain a Business License from the local authority.
- The business premises must provide access to bedrooms and bathrooms at all times for registered guests;
- Guests must be provided with a door key (for privacy) to their lettable room.
- The business facility must have an area where breakfast can be served, adequate for the use of, and easily accessible to any guest on the premises. No kitchen facility may be provided to guests in the lettable rooms;
- The business premises must have a bathroom and toilet for each lettable room suitably placed in a separate compartment which is close to the lettable room and is easily accessible to the guest/s of a lettable room and separate to that of the owner of the facility;
- The operation of the business may not detract from the residential character and amenities of the property or the immediate surroundings;
- The facility may not include a place of public assembly or a place of public amusement.

4.3. Municipal SME Registration & Regulatory Procedures

According to the Municipal Systems Act (and other pieces of legislation), Municipalities have the power to enact by-laws within the regulations provided by National Government. While neither Mangaung nor Matjhabeng have any by-laws that deal specifically with SMEs, the following are relevant to small businesses.

4.3.1. Mangaung Metropolitan Municipality

4.3.1.1. Street Trading

- o Street trading is allowed within business, rural and residential areas, subject to the provisions of Mangaung's by-laws and other applicable legislation. Business areas are those areas in Bloemfontein, Botshabelo and Thaba Nchu where most of the businesses are situated.
- o A person who wants to conduct street trading in the business area must apply to the Council on a prescribed form for the allocation of a street trading site to him.
- o No person may conduct the business of a street trader in a business area without being in possession of a valid street trading identity card issued by the Council.
- o Street trading is prohibited in the following areas:
 - In any garden or park which is zoned as a public or private open space;
 - On a sidewalk adjacent to a government building, church, buildings of national heritage, an automatic teller machine or any entry to a financial institution;
 - On a sidewalk adjacent to a building in which business is being carried out by any person who sells goods of the same nature as or of a similar nature to goods being sold by the street trader concerned;
 - In front of a residential building if the owner or occupier of that building objects;
 - Within 5 metres of any signalised intersection of two or more streets;
 - At any place where the selling of goods limits or may limit access to parking- or loading-bays or any other facilities for vehicular traffic;
 - Within the reserve of any road.
- o No street trading identity card will be issued to a street trader selling foodstuffs before he obtained a license from the Environmental Health-sub-directorate of the Municipality.
- o The following goods may not be sold by street traders:
 - live-stock, pets, reptiles, birds, rabbits, wild animals and, or poultry except with the prior written approval of the Council;
 - raw meat or raw fish;
 - milk;
 - any form of alcohol or alcoholic drinks;
 - vehicles, trailers or caravans;
 - any noxious or smelly substance or article that may cause a nuisance;

- pesticides, insecticides, poisonous and, or hazardous substances;
- any counterfeit goods or articles and any goods prohibited by legislation;
- o A street trader is not allowed to:
 - Sleep overnight at his place of selling;
 - Erect any structure at his place of selling without Council permission;
 - Accumulated, dump, store or deposit any refuse, scrap or waste material on any land or premises or on any public road or public place.
 - Burn any goods, materials or refuse or start a fire for any reason other than preparing foodstuffs;
 - permit or cause any goods, receptacles or refuse to be placed outside the demarcated confines of the approved street trading-stand;
 - Sell his goods or services in or at a building or property without the consent of the owner;
 - Commence selling before 07h00 or sell after 20h00.

4.3.1.2. Outdoor Advertising

- o This by-law is applicable to signs displayed on both public and private property. Businesses should be aware that they must obtain consent from the Municipality before any signs can be erected. If consent is granted, the applicant has 12 months to erect the sign or the consent will lapse. Applicants must apply for a renewal at least 60 days prior the consent expiration date.
- o The Municipality has adopted a classification system for advertising signs that describe the general description of their characteristics and functions of each of the different kinds of signs. There are also specific conditions related to the display of signs according to these categories.
- o Businesses must be aware that certain categories of signs will require that an Environmental Impact Assessment be conducted before an application for Municipal consent can be made.
- o Businesses may not alter any sign on municipal or private land without prior approval from the Municipality.
- o Certain areas have been declared as *prohibited advertising areas* where no advertising signs will be allowed. In some circumstances the Municipality may require an applicant to sign a contract or an indemnity form.
- o Signs or advertisements may not obscure or hinder the visibility of traffic signals or be a danger to members of the general public.
- o Signs should be aesthetically pleasing and not be cluttered in any particular area.
- o Signs may not reflect the activity and/or zoning of the property.

- o A sign or advertisement positioned along a road and specifically targeting the road user must be concise and legible.
- o An applicant may write a letter of request, addressed to the Municipal Manager, to relax or waive any of the provisions in this by-law.

4.3.1.3. Electricity

- o Businesses seeking to apply for the supply of electricity must do so on the prescribed form supplied by the service provider (i.e. Centlec) and clearly state the estimated load in kVA.
- o The service provider must have access to the business property for purposes of inspections and maintenance.
- o The service provider shall have the right to disconnect the supply of electricity to any premises if the person liable to pay for such supply fails to pay any charge due to the service provider in connection with any supply of electricity.
- o At times of peak load, or in an emergency, or when, in the opinion of the service provider, it is necessary for any reason to reduce the load on the electricity supply system of the service provider, the service provider may without notice interrupt and, for such period as the service provider may deem necessary, discontinue the electricity supply. The service provider shall not be liable for any loss or damage directly or consequentially due to or arising from such interruption and discontinuance of the electricity supply.
- o Except in the case of prepayment meters, the electricity used by a consumer during any metering period shall be ascertained by the reading of the appropriate meter or where the metering equipment is found to be defective, the consumption for the period shall be estimated.
- o The consumer shall be entitled to have the metering equipment tested by the service provider on payment of the prescribed fee.
- o No emergency standby equipment (e.g. generator) provided by a consumer for his own operational requirements, shall be connected to any electrical installation without the prior written approval of the service provider.
- o The consumer shall bear the cost of the service connection, as approved by the service provider. Ownership of the service connection, laid or erected by the service provider, shall vest in the service provider.
- o Unless otherwise authorised by the service provider, no person shall sell or supply electricity, supplied to his premises under an agreement with the service provider, to any other person or persons for use on any other premises, or permit or suffer

such resale or supply to take place. Where authorised to resell electricity, it may not be sold at less favourable tariffs.

4.3.1.4. Water

- o No person shall gain access to water services from the water supply system, sewage disposal system or through any other sanitation services unless he or she has applied to the Municipality on the prescribed form.
- o A consumer shall be liable for all the prescribed tariffs and / or charges in respect of water services rendered.
- o Every consumer must on application for the provision of water services and before such water services will be provided by the Municipality, deposit with the Municipality a sum of money equal to the estimated tariff and or charge for an average of two months consumption of water.
- o The Municipality may estimate the quantity of water services provided in respect of a period or periods within the interval between successive measurements and may charge a consumer for the services so estimated.
- o Accounts will be rendered on a monthly basis to consumers for the amount due and payable, at the address last recorded with the Municipality.
- o A consumer may terminate an agreement for the provision of water services by giving to the Municipality not less than thirty working days' notice in writing of his or her intention to do so.
- o If an agreement for water supply services in respect of premises has been concluded and no connection pipe exists in respect of the premises, the owner shall make application on the prescribed form and pay the prescribed *erf connection charge* for the installation of such a pipe.
- o Only one connection pipe to the water supply system may be provided for the supply of water to any premises, irrespective of the number of accommodation units, business units or consumers located on such premises. The Municipality may however authorise that more than one connection pipe be provided under certain circumstances.
- o The municipality is under no obligation to provide businesses with an uninterrupted supply of water, at a specific pressure or rate of flow, or at a specific standard of quality.
- o Water users using more than 3 650 kl per annum, excluding those comprising multiple dwelling units, must within one month after the end of each financial year of the Municipality undertake an annual water audit at their own cost.

4.3.1.5. Industrial Effluents

- o No person shall discharge or allow to be discharged into any sewer any industrial effluent without the written permission of the Council in the form of a permit.
- o The owner or occupier of any premises from which industrial effluent is discharged into a sewer, shall provide adequate facilities such as overflow level detection devices, standby equipment, overflow catch pits or other appropriate means effectively to prevent the discharge into any sewer of any substance prohibited or restricted in terms of the by-laws.
- o A business may not discharge any substance that:
 - is not amenable to treatment at the sewerage treatment works (or damage equipment at the treatment works);
 - generate or constitute a toxic substance dangerous to the health of persons employed at the sewerage treatment works;
 - may be offensive or may cause a nuisance to the public;
 - is in the form of steam or vapour;
 - has a temperature exceeding 44°C at the point where it enters the sewer;
 - contains a substance of whatever nature which, in the opinion of the Council, may produce or give off explosive, flammable, poisonous or offensive vapours in the sewer;
 - contains a substance having an open flashpoint of less than 93°C or which gives off a poisonous vapour at a temperature below 93°C;
 - contains a material of whatever nature, including oil, grease, fat or detergents capable of causing an obstruction to the flow in sewers or drains or interference with the proper operation of a sewerage treatment works;
 - shows any visible signs of tar or associated products or distillates, bitumens or asphalts;
 - contains a substance of such concentration that it may in the opinion of the Council cause the final treated effluent from any sewerage treatment works to have an undesirable taste after chlorination or an undesirable odour or colour or which is likely to produce excessive foam.

4.3.1.6. Municipal Property Rates

- o Municipal services to businesses must be financed from collected service charges. Community and subsidised services may be financed from any surpluses that remain.
- o The Municipality may levy different rates (service charges) based on the different categories of property (as classified by the municipality's rates policy).

- o In determining the category of property the Municipality will take the dominant land-use of the property into account, regardless of the current zoning of the property.
- o Service rates will be determined annually by the Municipality.
- o If rates are not paid after 30 days from the due date, compounded interest will become payable.
- o The Municipality will compile and maintain a register of all properties within its jurisdiction. This register must be available to the public at all municipal pay points.
- o The Municipality must prepare a new valuation roll every four years. Supplementary valuations will be conducted at least once per annum to maintain the valuation roll.

4.3.2. Matjhabeng Local Municipality

4.3.2.1. Municipal Property Rates

- o According to the rates by-law of the Matjhabeng Local Municipality, 2011, the aim is to allow Council to exercise its power to value and impose rates on immovable properties located within its area of jurisdiction in such a manner that it will contribute to effective and economic service delivery to the entire community.
- o The municipality shall prepare a new valuation roll every 4 (four) years, with the option to extend the validity of the valuation roll to 5 (five) years with the approval of the MEC for Local Government and Housing in the province. Supplementary valuations will be done on a monthly basis to ensure that the valuation roll is properly maintained.
- o The municipality will compile and maintain a register in respect of all properties situated within the jurisdiction of the municipality. The register will be divided into Part A and Part B. Part A of the register will consist of the current valuation roll of the municipality and will include all supplementary valuations done from time to time. Part B of the register will specify which properties on the valuation roll or any supplementary valuation roll are subject to:
 - i. Exemption from rates in terms of section 15 of the Property Rates Act, 2004,
 - ii. Rebate or reduction in terms of section 15,
 - iii. Phasing-in of rates in terms of section 21, and
 - iv. Exclusions as referred to in section 17.
- o The register will be open for inspection by the public at the municipal main offices during office hours or on the website of the municipality.
- o The municipality's rates policy must be reviewed on an annual basis.
- o Different rates may be levied in respect of the categories of rateable properties as determined by the municipality's rates policy.

- o Criteria for differential rating on different categories of properties will be according to-
 - i. The nature of the property including its sensitivity to rating e.g. agricultural properties used for agricultural purposes.
 - ii. The promotion of social and economic development of the municipality.
 - iii. Differential rating among the various property categories will be done by way of setting different cent amount in the rand for each property category as well as by way of reductions and rebates.

4.3.2.2. Street Trading

- o According to the Street Trading By-Law (No. 7 of 2008), no person may conduct the business of a street trader in a public amenity, a garden or park the public has a right to access, a church or place of worship or a heritage resource.
- o Furthermore, no person may conduct business as a street vendor if it causes obstruction:
 - in front of a fire hydrant,
 - in front of the entrance or exit to a building
 - to vehicle traffic
 - to pedestrians in their use of sidewalks.
- o A street trader may not conduct business on a stand if he/she is not in possession of written proof that he/she rented the stand from the Municipality.
- o A trader must carry out his/her business in an area as designated by the Municipality.
- o A trader's goods may not exceed 3m² without written consent from the Municipality.
- o On conclusion of business, all property and goods must be removed, except for structures allowed by the Municipality.
- o A street trader may not sleep overnight at the place of doing business
- o The stand, property and goods must be kept clean and in good order
- o The Municipality may declare any area as restricted for street traders in terms of specific categories of goods as well as specific times or days.
- o Any person wishing to conduct business as a street trader must apply to the Municipality for the lease or allocation of a stand and enter into a lease agreement. A person who cannot provide a valid lease or token is guilty of an offence.
- o The Municipality may impound or remove goods where these goods are traded without the proper lease agreement.
- o No person under the age of 16 is allowed to trade as a street trader.
- o Any person employing a child is guilty of an offence.

4.3.2.3. Tariffs

- o The aim of the Tariff By-Law (No. 3 of 2008) is to ensure the council controls, manages and develops tariffs which are financially sustainable and which clearly defines the right and obligations of the public.
- o Tariffs, as well as minimum deposit levels are revised annually.
- o The majority of tariffs are utilities charges, such as water and electricity.
- o A minimum of basic services are subsidised to the poor. These include potable water, domestic sewage removal, domestic refuse removal and electricity.
- o The owner of a property is liable for payments of rates and sewage fees. Tenants are liable for water and electricity. If a tenant does not pay an account, the owner remains responsible for the outstanding debt.
- o In terms of water usage fees, a fixed tariff is charged for:
 - Water connections
 - Upgrading of water meters
 - Special readings
 - Testing of meters
 - Installation of taps
 - Moving of meters
 - Opening of meters inaccessible for reading
 - Tampering with meters.
- o 6 Kilo-litres of water a month is supplied at no cost.
- o Each consumer has to pay for refuse removal. Increased volumes must be paid for by the consumer at an additional cost.
- o A consumer who chooses to remove his/her own refuse is still liable for the refuse tariff.
- o Contractors are obliged to pay a dumping fee.
- o In terms of sewage, a flat rate is applicable which differentiates only between groups of properties. Fixed tariffs are charged for:
 - Sewage connections
 - Larger connections
 - Inspection of blockages
 - Opening of blockages
 - Emptying of septic tanks
- o Unimproved properties are charged as if they have buildings on the plot.

- o If a dwelling is erected on an unimproved property, the levy should be rectified on a pro-rata basis as from the date the building is completed

4.4. Applicable requirements for doing business with government

In order to be able to do business with government, a business must adhere to certain strict principles and guidelines. These guidelines are informed by Section 217 of the Constitution of the Republic of South Africa which requires an organ of state to contract for goods or services in accordance with a system which is fair, equitable, transparent, competitive and cost effective. Model policies are available for all local municipalities and must conform to section 111 of the Municipal Finance Management Act, (No. 56 of 2003) and the Municipal Supply Chain Management Regulations (Notice 858 of 2005).

4.4.1. Procurement from a body other than an organ of State, i.e. private business

When applying for government procurement, the Municipality may not consider a quotation unless the relevant documentation is provided.

This includes:

- providing the Municipality with full names and identity number, company/ close corporation registration number, tax reference number, and VAT registration number(if applicable) and municipal rates and taxes number;
- providing an original tax clearance certificate from SARS to the effect that his tax matters are in order. It is Government's policy not to enter into business arrangements with any supplier whose tax affairs are not in order, or who has not made satisfactory arrangements with SARS to meet any outstanding obligations. SARS will, on request, issue tax clearance certificates (valid for 6 months) to potential suppliers. SARS has ruled that only original certificates should be accepted and that copies of acceptance of bids together with copies of the original tax clearance certificate supplied by the contractor be forwarded to them.
- providing a rates clearance certificate indicating the following:
 - o Whether the supplier is in the service of the state, or has been in the service in the state in the previous twelve months;
 - o in the event that the supplier is not a natural person, whether any of its directors, principal shareholders or stakeholders is in the service of the state, or has been in the service of the state in the previous twelve months;
 - o whether a spouse, child or parent of the supplier or of a director, manager, shareholder or stakeholder referred to above is in the service of the state, or has been in the service of the state in the previous twelve months.

- Providing proof that the supplier's name does not appear on a database maintained by the national treasury as a person prohibited from doing business with the public sector.

4.4.1.1. Register of accredited prospective service providers

All municipalities' CFOs must establish and maintain a Register of accredited prospective service providers, which is an electronic database to be utilised by the Municipality through written quotations for procurements below R 200 000 (incl. VAT). Evaluation criteria are based on the following:

- previous experience;
- qualifications of owner(s), directors, members, trustees and staff;
- value of contracts completed in the past year;
- value and duration of current contracts;
- persons that may be contacted for references;
- contracts completed on time and within budget; and
- contracts awarded as a main contractor or as sub-contractor

Unless otherwise directed by the City Manager, invitations to submit quotations for the goods, work or services concerned are limited to the service providers whose names are included in the relevant lists in the Register. Where no suitable service providers are available from the Register, quotations may be obtained from other possible suppliers. The use of the Register is obligatory for directorates for the procurement of goods or services above R500 to a maximum of R30 000 (VAT included) through written quotations.

4.4.1.2. Range of Procurement processes

The procurement of goods and services is done in a formalised manner by asking for written quotations or competitive bidding processes.

The range is set out below-

- Formal written quotations for procurement of a transaction value over R10 000 up to R200 000 (VAT included);
- A competitive bidding process for :
 - o all procurements above a transaction value of R200 000 (VAT included); and
 - o the procurement of long term contracts;
- The City Manager may lower, but not increase, the different threshold values specified above, or direct that :
 - o written quotations be obtained for any specific procurement of a transaction value lower than R500 (VAT included);

- o formal written quotations be obtained for any specific procurement of a transaction value lower than R10 000 (VAT included);
 - o a competitive bidding process be followed for any specific procurement of a transaction value lower than R200 000 (VAT included);
- The City Manager may dispense with the prescribed processes and authorize the acquisition of any goods or services through any convenient process:
 - o in the event of an emergency;
 - o if the required goods or services are available from a single service provider only;
 - o in any exceptional case where it is impractical to follow the prescribed procedure; and
 - o if the desired goods or services are to be acquired under a contract secured by another organ of state, provided that such contract has been secured through a competitive bidding process and the organ of state and the service provider concerned consented in writing to such procurement.
- Nobody may, in order to avoid compliance with any prescript, split the procurement of any goods, services or the execution of work into lesser items or parts or enter into more than one contract. When determining transaction values, a requirement for goods or services consisting of different parts or items, must as far as possible be treated and dealt with as a single transaction.
- Written quotations must be obtained by the directorate concerned from at least three different service providers whose names appear on the Register, provided that if quotations are obtained from service providers who are not included in the Register, such service providers must meet the listing criteria mentioned.
- In the event that it is not feasible to obtain at least three quotations, the reasons must be recorded and approved by the CFO or an official designated by him or her.
- After evaluation of the quotations received, the responsible official must submit a report in the approved format to the relevant delegated authority in the directorate for his or her approval. A copy of this report must after approval be submitted to the CFO.
- The Municipality may, if necessary, communicate with prospective service providers prior to the submission of quotations in order to supply additional information or to clarify vague points in the quotation documents.
- All quotations prices shall be deemed to be fixed (not subject to contract price adjustment) unless otherwise stated in the quotation documents.
- A non-refundable bid charge, as required in the bid notice, may be raised by the Municipality for bid documents.

- Details of all prospective bidders who have been issued with bid documents shall be recorded by the Supply Chain management (SCM) Unit. Such details shall include:
 - o the legal and full name of the person/company/closed corporation/firm drawing documents;
 - o a contact person;
 - o a contact telephone number;
 - o a contact fax number;
 - o a postal address;
 - o an e-mail address.
- To strive towards uniformity, all contracts must be based on the General Conditions of Contract (GCC), issued by the National Treasury.
- Bidders are required to quote unit prices or lump sum prices and such prices should include all duties, taxes, percentage fees for cost reimbursable contracts and other levies. Bidders are allowed to obtain all inputs from any eligible sources in order to offer their most competitive bids.

There are essentially five distinct stages in the bidding process:

- Compiling bid documents;
- Inviting bids;
- Receiving bids;
- Evaluating bids;
- Clearing successful bidders and awarding contracts

4.4.1.3. Issuing and submission of documentation

Quotation documents shall clearly state the place where such documents must be submitted and a date by when they must be returned. All prices submitted shall remain confidential until all invited quotations have been received.

4.4.1.4. Acceptance of Quotations

Quotations shall be accepted by means of a letter of acceptance or the issue of an official order.

4.4.1.5. Invalid and non-responsive quotations

i) Invalid quotations

Quotations shall be considered invalid and shall be endorsed and recorded as such by the responsible official who opened the quotations in the following instances:

- o where the quotation is not submitted on the official quotation form;

- o where the quotation is not completed in non-erasable ink;
- o where the quotation form has not been signed;
- o where the quotation form is signed, but the name of the quoter is not stated, or is indecipherable.
- o When quotations are declared invalid at the quotation opening, the name of the person quoting and the reason for the quotation having been declared invalid shall be recorded.

ii) Non-responsive and non-responsible quotations

Quotations that are non-responsive (i.e. technically unacceptable) and non-responsible (i.e. price very high or very low) will be disqualified.

- **Non-responsive quotations**

Quotations that do not respond to any of the technical requirements of the scope of work or do not meet any of the technical specifications outlined in the enquiry document without clarification and acceptance by the person that issued the enquiry documents will be disqualified.

- **Non-responsible quotations**

These refer to quotations with a price that is very high or very low and is therefore not considered a fair and acceptable market price.

4.4.1.6. Competitive Bids

Goods or services above a transaction value of R200 000 (VAT included) must be procured through a competitive bidding process, save for in the case of an emergency. No requirement for goods or services above an estimated transaction value of R200 000 (VAT included) may deliberately be split into parts or items of lesser value merely for the sake of procuring the goods or services otherwise than through competitive bidding.

The bid documentation, if the value of the transaction is expected to exceed R10 million (VAT included), require bidders to furnish:

- annual financial statements for auditing, their audited financial statements for the past three years or since the establishment if established during the past three years;
- a certificate signed by the bidder certifying that the bidder has no undisputed commitments for municipal services towards a municipality or other service provider in respect of which payment is overdue for more than 30 days; particulars of any contracts awarded to the

bidder by an organ of state during the past five years, including particulars of any material non-compliance or dispute concerning the execution of such contract;

- a statement indicating whether any portion of the goods or services are expected to be sourced from outside the Republic of South Africa, and if so, what portion and whether any portion of payment from the Municipality is expected to be transferred out of the Republic of South Africa.

4.4.1.7. Preference point systems

The 80/20 preference point system is applicable to bids with a Rand value equal to, or above R30 000 and up to a Rand value of R1 million (all applicable taxes included).

- Institutions may apply the 80/20 preference point system to price quotations with a value less than R30 000 if and when appropriate.
- The 90/10 preference point system is applicable to bids with a Rand value above R1 million (all applicable taxes included).
- The value referred to above, distinguishing the 80/20 and 90/10 preference point systems has been increased from R500 000 to R1 million.

Bidders are required to submit original and valid B-BBEE Status Level Verification Certificates or certified copies thereof together with their bids, to substantiate their B-BBEE rating claims. Bidders who do not submit B-BBEE Status Level Verification Certificates or are non-compliant contributors to B-BBEE do not qualify for preference points for B-BBEE but should not be disqualified from the bidding process. They will score points out of 90 or 80 for price only and zero (0) points out of 10 or 20 for B-BBEE.

A trust, consortium or joint venture must submit a consolidated B-BBEE Status Level Verification Certificate for every separate bid. Public entities and tertiary institutions must also submit B-BBEE Status Level Verification Certificates together with their bids. If an institution is already in possession of a valid and original or certified copy of a bidder's B-BBEE Status Level Verification Certificate that was obtained for the purpose of establishing the database of possible suppliers for price quotations or that was submitted together with another bid, it is not necessary to obtain a new B-BBEE Status Level Verification Certificate each time a bid is submitted from the specific bidder. Such a certificate may be used to substantiate B-BBEE rating claims provided that the closing date of the bid falls within the expiry date of the certificate that is in the institution's possession.

4.4.1.8. Sub-contracting

- A bidder must not be awarded the points claimed for B-BBEE status level of contribution if it is indicated in the bid documents that such a bidder intends sub-contracting more than 25% of the contract value to any other enterprise that does not qualify for at least the same number of points that the bidder qualifies for, unless the intended sub-contractor is an emerging micro-enterprise (EME) that has the capability and ability to execute the sub-contract.
- In relation to a designated sector, a contractor must not be allowed to sub-contract in such a manner that the local production and content of the overall value of the contract is reduced to below the stipulated minimum threshold.

4.4.1.9. Bidding Documents

Institutions should customise and use the appropriate Standard Bidding Documents (SBDs) issued by the National Treasury with minimum changes acceptable to the accounting officer/authority, as necessary to address contract- and project-specific issues. Where no relevant standard bidding documents have been issued, the institution should use other internationally recognised standard contract forms acceptable to the accounting officer/authority, in concurrence with the relevant Treasury.

The following bidding documents, which have been amended where necessary in accordance with the prescripts of the Preferential Procurement Regulations, 2011, are most often utilised:

- **Standard Bidding Documents (SBDs)** for use by all national and provincial departments, constitutional institutions and public entities listed in schedules 3A and 3C to the Public Finance Management Act (PFMA); and
- **Municipal Bidding Documents (MBDs)** for use by all municipalities and municipal entities to which the MFMA apply.

Table 4.2- Standard and Municipal Bidding Documents

SBD / MBD Description	Document Number
Invitation to Bid	SBD / MBD 1
Application for Tax Clearance Certificate	SBD / MBD 2
Pricing Schedules	SBD / MBD 3.1,3.2,and 3.3
Declaration of Interest	SBD / MBD 4

SBD / MBD Description	Document Number
National Industrial Participation Programme	SBD 5
Declaration for Procurement above R10 000 000	MBD 5
Preference claims in terms of the Preferential Procurement Regulations 2011	SBD / MBD 6.1
Declaration Certificate for Local Content	SBD / MBD 6.2
Formal contracts	SBD / MBD 7.1, 7.2 and 7.3
Declaration of Bidder's past SCM practices	SBD / MBD 8
Certificate of Independent Bid Determination	SBD / MBD 9
The above SBDs / MBDs replace those that were previously issued by the National Treasury	

(Source: National Treasury)

4.4.1.10. The Tender Process²⁶⁹

Each tender or bid advert indicates where a bidder can collect the documents required to submit the tender, and where they should be submitted. The advert also indicates a closing date. This is a very firm deadline; no late tenders are accepted. It is advisable that bidders check for any compulsory site meetings or any other special conditions of contract as non-compliance can disqualify them. Tenders or bids have to be in writing. Each tender has a number of associated forms which must accompany the tender submission. The specific forms required should be listed in the tender documentation. The tender must be placed in an envelope with the tender number on it and delivered before the closing time to the place specified when the tender was advertised.

1. National and Provincial tender forms or bid documents

Each tender or bid has a number of associated forms, which must accompany the tender or bid submitted. These used to be known as "tender forms" and are now called "bid documents". These bid documents have the prefix "SBD" and "WCBD" for national and provincial bid documents respectively.

²⁶⁹How to Tender. Western Cape Government

The following forms are usually required for national and provincial tenders (except for provincial construction tenders):

- Invitation to Bid SBD1/WCBD1: In this document the bidder agrees to be bound by the tender or bid terms and conditions.
- Tax Clearance Certificate (TCC) Requirements SBD2/WCBD2: It is a condition of bid that the taxes of the successful bidder must be in order, or that satisfactory arrangements have been made with South African Revenue Service (SARS) to meet the bidder's tax obligations. In order to meet this requirement bidders are required to complete in full the form TCC 001 "Application for a Tax Clearance Certificate" and submit it to any SARS branch office. The TCC requirements are also applicable to non-South African bidders/ individuals who wish to submit bids. The original TCC must be submitted together with the bid.
- Pricing Schedules SBD/WCBD 3.1 or 3.2 or 3.3
- WCBD 3.1 is used when only firm prices will be accepted. Non-firm prices, including prices subject to rates of exchange variations, will not be considered.
- WCBD 3.2 is used when price adjustments will be allowed at periods and times specified in the bid documents.
- WCDB 3.3 is used when the department intends procuring professional services.
- Declaration of Interest, Declaration of Bidder's Practices and the Certificate of Independent Bid Determination SBD4/WCBD4: The bidder or his/her representative must declare his/her position in relation to the evaluation/adjudication committee to avoid possible allegations of favouritism. The Declaration of Bidder's Practices document is used by institutions in ensuring that when goods and services are being procured, all steps are taken to combat the abuse of the supply chain management system. The Certificate of independent Bid Determination ensures that when bids are considered, reasonable steps are taken to prevent any form of bid rigging. This form must be completed and submitted with every bid.
- Industrial Participation Programme SBD5/WCBD5
- Any contract having an imported content equivalent to or exceeding US\$10 million has an industrial participation (IP) obligation, which must be addressed in the tender.
- Preference Certificate: Form 6.1(a), the preference claim form for 80/20 (rand value up to R1 000 000) and Form 6.1(b), the preference claim form for 90/10 (rand value above R1 000 000) contain general information and each serves as a claim for Historically Disadvantaged Individuals (HDI) preference points as well as a summary for preference points claimed for the attainment of other specified goals.

- Contract Form SBD/WCBD 7.1 or 7.2: This is the contract that binds the parties should the tender be successful. There is a different form for purchases of goods, services or works (7.1) and sale of goods or works (7.2).
- Annexure A - GCC (General Conditions of Contract) draws special attention to certain general conditions applicable to government bids, contracts and orders, and ensures that clients are familiar with the rights and obligations of all parties involved in doing business with government.

2. Local Government tender or bid forms

At local level, each council may have its own forms, which the bidder should enquire about on an individual basis.

The following Municipal Bid Documents (MBD) are normally required for Municipal tenders (excluding the construction sector):

- Form MBD 1. Invitation to bid.
- Clearance certificate for water and lights: to obtain proof that municipal rates and taxes of the proposed bidder are not more than three months in arrears with the relevant municipality where the business is situated.
- MBD 2: Tax Clearance Certificate: It is a condition of bid that the taxes of the successful bidder must be in order, or that satisfactory arrangements have been made with South African Revenue Service (SARS) to meet the bidder's tax obligations. In order to meet this requirement bidders are required to complete in full the form TCC 001 "Application for a Tax Clearance Certificate" and submit it to any SARS branch office.
- List of references. A list of at least three reputable references that can vouch for the competency of the bidder in his/her required field of expertise.
- A checklist for the bidder to ensure all relevant documents are attached.
- GCC or general conditions of contract. Contract conditions as per the National Treasury. These include general conditions applicable to all bids, which comprise of, among other things, standards, patent rights, performance security, inspections, tests, packing, insurance, transportation, warranties, payments, regulations around sub-contracting and penalties, etc.
- MBD 3.1 pricing schedule. It is used when only firm prices will be accepted. Non-firm prices, including prices subject to rates of exchange variations, will not be considered.
- MBD 3.2 pricing schedule is used when price adjustments will be allowed at periods and times specified in the bid documents.

- MBD 3.3 pricing schedule is used when the department intends procuring professional services.
- MBD 4. Declaration of Interest. The bidder or his/her representative must declare his/her position in relation to the evaluation/adjudication committee to avoid possible allegations of favouritism.
- MBD 5. Declaration for procurement above R10,000 000
- MBD 6.1. Preference points claim form. This preference form must form part of all bids invited. It contains general information and serves as a claim form for preference points for Broad-Based Black Economic Empowerment (B-BBEE) Status Level of Contribution
- MBD 6.2. This Municipal Bidding Document must form part of all bids invited. It contains general information and serves as a declaration form for local content (local production and local content are used interchangeably). Before completing this declaration, bidders must study the General Conditions, Definitions, Directives applicable in respect of Local Content as prescribed in the Preferential Procurement Regulations, 2011 and the South African Bureau of Standards (SABS) approved technical specification number SATS 1286:201x.
- MBD 6.3. Preference Points Claim form in terms of the preferential procurement Regulations 2001 Promotion of small businesses.
- MBD 7.1. Contract form for the purchase of works and/or goods. This contract binds the parties should the bid be successful.
- MBD 7.2. . Contract form for the rendering of services. This contract binds the parties should the bid be successful.
- MBD 7.2. . Contract form for the sale of goods and or works. This contract binds the parties should the bid be successful.
- MDB 8. Declaration of bidder's past SCM practices. It serves as a declaration to be used by municipalities and municipal entities in ensuring that when goods and services are being procured, all reasonable steps are taken to combat the abuse of the supply chain management system. The bid of any bidder may be rejected if that bidder, or any of its directors have:
 - o abused the municipality's / municipal entity's supply chain management system or committed any improper conduct in relation to such system;
 - o been convicted for fraud or corruption during the past five years;
 - o wilfully neglected, reneged on or failed to comply with any government, municipal or other public sector contract during the past five years; or
 - o been listed in the Register for Tender Defaulters in terms of section 29 of the Prevention and Combating of Corrupt Activities Act (No 12 of 2004).

- MDB 9. Certificate of Independent bid determination. The Certificate of independent Bid Determination ensures that when bids are considered, reasonable steps are taken to prevent any form of bid rigging. This form must be completed and submitted with every bid.

3. Construction Tenders²⁷⁰

Uniformity in procurement documentation permits the documentation process to be simplified and computerised; contractors to more accurately price the risks, which they are to assume, and the effectiveness and efficiency of procurement to be improved. Therefore, the construction industry has uniform guidelines established by the cidb in accordance with:

- o the CIDB Best Practice Guideline CI (1009), Preparing Procurement Documents;
- o SANS 294, Construction Procurement Processes, Procedures and Methods
- o SANS 10403, Formatting and Compilation of Construction Procurement Documents

Construction procurement documents for engineering and construction works, services and supplies follows a specific format, which is outlined briefly below:

- A tender cover
- A tender contents page
- T 1.1. Tender notice and invitation to tender: Alerts tenderers to the nature of the supplies, services and engineering and construction works required by the employer and should contain sufficient information to enable them to respond appropriately.
- T 1.2. Tender Data: States the applicable conditions of tender and associated tender specific data that establishes the rules from the time that tenders are invited to the time that a tender is awarded. The Tender Data does this by establishing a set of generic rules relating to the process of offer and acceptance. The Tender Documents issued by the Employer comprise the following documents:
 - o The Tender
 - o Part T1: Tendering procedures
 - o T1.1 - Tender notice and invitation to tender
 - o T1.2 - Tender data
 - o Part T2: Returnable documents
 - o T2.1 - List of returnable documents
 - o T2.2 - Returnable schedules

²⁷⁰ *Tender Compiler Guidance Notes: 2009. CIDB*

- o The Contract
 - o Part C1: Agreements and Contract data
 - o C1.1 - Form of offer and acceptance
 - o C1.2 - Contract data
 - o C1.3 - Performance Bond
 - o C1.4 - Adjudicator's contract
 - o Part C2: Pricing data
 - o C2.1 - Pricing instructions
 - o C2.2 - Bill of Quantities
 - o Part C3: Scope of work
 - o C3 - Scope of work
 - o Part C4: Site information
 - o C4 - Site information
 - o The tender specific variables relating thereto.
- Form T 2.1 is known as the list of returnable documents: This list ensures that everything the employer requires a tenderer to submit with his tender is included in, or returned with, his tender submission.

These documents include:

- o Record of Addenda to tender documents: Compulsory document that is to be included in all procurement documents.
- o Compulsory Enterprise Questionnaire: Compulsory document that is to be included in all procurement documents.
- o Certificate of Authority for Joint Ventures: Included where joint ventures are likely to submit tenders.
- o Proposed amendments and qualifications: Included in all procurement documents.
- o Preferencing schedule
- o Evaluation Schedule: Approach paper
- o Evaluation Schedule: Tenderer's Experience
- o Evaluation Schedule: Proposed Organisation and staffing
- o Evaluation Schedule: Experience of Key Staff
- o Evaluation Schedule: Quality Control Procedures
- o Also included in the list should be the following information where the transaction is expected to exceed R 10 million including VAT before their tenders may be evaluated:

- audited financials for the past three years or since the establishment of the enterprise, if required by law to produce annual financial statements;
 - a certificate certifying that the enterprise has no undisputed commitments to a municipality or other service provider in respect of which payment is overdue by more than 30 days;
 - particulars of any contracts awarded by an organ of state during the last five years including particulars of any material non-compliance or dispute concerning their execution over this period;
 - a statement indicating whether any portion of the goods or services are expected to be sourced from outside the Republic, and, if so, what portion and whether any portion of payment from the municipality or municipal entity is expected to be transferred out of the Republic.
- The document T 2.2. is known as the Returnable schedules. It contains documents that the tenderer is required to complete for the purpose of evaluating tenders and other schedules which upon acceptance become part of the subsequent contract. Regulation 13 of the Local Government: Municipal Finance Management Act, 2003, Municipal Supply Chain Management Regulations requires that tenderers submit the following to permit municipalities and municipal entities consider their quotation or tender:
 - o name, identification number or company registration number or other registration number, and tax reference number and VAT registration number, if any;
 - o authority to permit the municipality or municipal entity to obtain a tax clearance certificate from SARS;
 - o a disclosure relating to individuals (sole proprietors, individuals, directors, principal shareholders or stakeholders) who are in the service of the state or have been in the service during the last 12 months; and
 - o a disclosure relating to individuals (sole proprietors, individuals, directors, principal shareholders or stakeholders) whose spouse, parent or child are in the service of the state or have been in the service during the last 12 months.
 - The inclusion of the Compulsory Enterprise Questionnaire enables the returnable schedules requirements to be satisfied. It also allows for bidders to declare any conflict of interest.
 - It is usually not necessary to require tenderers to submit banking particulars for construction works contracts as the CIDB grading designations have already taken account of bank ratings in the grading criteria. (The submission of banking particulars should be requested in high value tenders where grade 9 contractors submit tenders.)
 - In some cases, it might be necessary, in order for a tenderer to submit documentation, to demonstrate his or her capability and capacity to perform the contract e.g. estimates of

monthly expenditure, preliminary programme of work, method statements, preliminary health and safety plans etc.

4.4.1.1.1. Awarding of tenders or bids

The document SBD/WCBD6.1(a) and SBD/WCBD6.1(b) explains how tenders or bids are decided.

The WCBD document explains the following tender decision making processes:

- The bidder obtaining the highest number of points will be awarded the contract.
- Preference points shall be calculated after prices have been brought to a comparative basis.
- Points scored will be rounded off to two decimal places.
- In the event of equal points scored, the bid will be awarded to the bidder scoring the highest number of points for specified goals.

The abovementioned implies that after the closing date, an elementary check is done on all the tenders submitted to ensure they comply with the formal requirements. Smaller mistakes or omissions may or may not disqualify a bidder from the tender process; this is a question of interpretation of the tender rules.

The next phase looks at compliance of the product or services with the specifications and price. Those which do not comply with the specifications are removed from the list, while all the tenders which comply with the specifications are listed in order of price. Those that fall in the lowest price group are then considered in a lowest price tender list. It is in this phase that the preference points come into play. All the preference points claimed by those on the list of lowest price tenders are first verified. Then the formula is applied to determine who of those on the lowest price list with verifiable points come out with the best result on points, and therefore who should be awarded the contract. This means preference points only come into play after the most expensive tenders have first been excluded. This is to ensure that the most expensive options do not win solely on points, and also to speed up the process, as only those on the lowest price list have their preference points verified. The Tender Bulletin shows who has won previous tenders, listing the price and other factors taken into account in awarding the tender.

4.5. Development Implications

Given South Africa's legacy of an unequal economy, it is essential that local government promote and supports the development of small businesses. The SME sector is a vital source for job creation and skills development and forms the basis of a growing economy. Thus far, there has been little in way of Government Policy to ensure SME growth. Currently, many SMEs still struggle with access to

markets, finance and expansion opportunities. Therefore, it is indispensable that government develop SME friendly policies which reduce the bureaucratic burden and financial constraints that currently beset small business. In some arenas, such as the new Companies Act, these goals are being delivered, however, in other areas, there is a need to consolidate legislation and resources and to streamline the process of registration and start-up for small enterprises. Too many incongruent and disparate policies and procedures exist which fragment the process, cause unnecessary delays and costs. The study has shown that the expenditure of SME on compliance and regulatory requirements remains high and it is proposed that certain strategies be adopted to encourage entrepreneurs to enter the market.

The mitigating options and recommendations in this regard are set out in Table 5.1.

Table 5.1 - Development constraints and mitigating options

SME Development Constraints	Development Implications	Mitigation Options and Recommendations
Business registration red tape: Lengthy time for application of business licences Costly, time consuming and complex procedures	SMEs wait long periods before operation of the business can commence.	- Introduce a clear point of access for business to interact with government on business matters. To this end, investigate the possibility of establishing a Red Tape call centre for the Free State Province to assist SMEs in registration, as well as business advice, reducing blockages in the SME start-up process. - Reduce the turnaround times for licence applications. - Government Departments and similar licensing authorities should co-ordinate and liaise with support organisations such as Business support agencies.
Restrictive informal trading by-	Informal traders are hampered	Create a system of

SME Development Constraints	Development Implications	Mitigation Options and Recommendations
laws	by licensing fees, confusing regulations, the threat of fines or confiscation for non-compliance. Furthermore, month-to month bases concessions prevent informal traders from entering the formal market, as banks are unwilling to provide loans on monthly concessions.	differentiated tariffs for informal traders • Streamline the process of registration and application of permits. • Establishment of management bodies such as Non-Profit companies to take control of collective management of traders can reduce the regulatory burden on Municipalities.
Regulatory constraints in terms of Tax compliance. Prohibitive level of taxation on SMEs.	Heavy tax burdens on SMEs increase the cost of doing business, hindering further expansion of business opportunities. Regulatory requirements in terms of annual tax reporting is complex and time consuming.	• Cut corporate taxes to attract foreign investment • Simplify the tax code by decreasing the number of tax categories and types of taxation, while relying more on taxes that are simple to oversee. • Create export processing zones where tax incentives, exemptions from profit and dividend repatriation and easier labour regulations which encourage labour-intensive manufacturing are applied. • Defer taxes on new SMEs until they are operating efficiently, or, alternatively, the first three years.
Fragmented environmental statutes.	Duplication of procedures and legislation leads to confusion and cumbersome compliance procedures for SMEs.	• Specifically focus on integrating fragmented legislation regulatory tools, processes and procedures in terms of legislation; and fragmented institutional and

SME Development Constraints	Development Implications	Mitigation Options and Recommendations
		administrative structures, processes and procedures. • A further recommendation is the integration of Policies via an environmental Governance Act establishing a single entity dealing with environmental regulations. Such an entity will facilitate consultation and support for all relevant stakeholders. • The promotion of energy saving solutions in business areas will also alleviate the energy burden on SMEs.
Bureaucratic delays in the construction sector	Authorisation has become a tedious process due to unnecessary duplication of policy processes.	• Review the time schedule planned for the pre-construction activities, such as the feasibility studies. • Streamline EIAs via an effective regulatory body
Time consuming and troublesome labour regulations Centralised bargaining structures, as currently established in certain industries, held negative consequences for smaller firms unable to meet the minimum wages set by the unions.	Over-regulation in the labour market has a greater impact on unemployment than other areas of regulation. Overregulation of the labour market encourages casualisation, mechanisation and an investment boycott of the very industries that have the greatest capacity for poverty reduction. Over-regulation impacts more heavily on SMEs than other businesses.	• Simplified dismissal procedures with clear guidelines for SMEs. • Stricter Screening procedures at the CCMA to prevent abuse of the system. • The regulations may require revision and the barriers preventing firms from expanding their workforce should be removed. • Reduce the costs of

SME Development Constraints	Development Implications	Mitigation Options and Recommendations
		compliance with labour law.
Lengthy customs regulations, procedures, and bureaucracy is an important business constraint. Importation time-frames are more heavily influenced by procedures and documentation, than infrastructure issues.		- Government might investigate the possible implementation of a SADC-region Visa. - An e-platform with updates on tariffs and relevant excise duties can assist SMEs. - Streamlined documentation and shorter procedural turnaround times is advisable.
The new Companies Act, 2008 requires mandatory financial statements and record keeping	Most SMEs might be unable to meet the capital needed to pay private audit firms for their audit services, or might lack the skills to administer such services, as most SMEs operate businesses without adequate or specific educational training on such businesses	- Large organisations such as banks and government departments could assist SMEs to meet this requirement: proper incentives, grants or subsidies could be allocated to significantly low turnover businesses to outsource these services. - Skills training and educational programmes could be initiated to educate struggling SMEs on basic accounting, bookkeeping, computer literacy i.e. excel or pastel, basic business management and the like.
By-laws with regards to SME development or the business environment are either out-dated or not well enforced	Lack of an orderly trading and responsible business environment leading to lack of fair competition and unplanned developments. This discourages business	Develop sound by-laws to assist and attract SMEs to underdeveloped towns and discourage unplanned developments in urban areas.

SME Development Constraints	Development Implications	Mitigation Options and Recommendations
Institutional Mandates offer only generic, and not sector-specific support with no control over many SME support programmes	A range of conflicting and overlapping objectives with regards to SMEs leaves SMEs under-supported and disorganized, resulting in a waste of resources.	• Review of the National Small Business Amendment Act to clearly define SME support. Align SEDA with local municipalities. • Development of an integrated SME department for the Province, consolidating all programmes to fall under one umbrella organisation to: - Facilitate compulsory registration, - Act as a SME one stop shop, - Disseminate information and SME awareness campaigns, - House a central repository of information on the SME sector, - Establish a collateral registry - Monitor and evaluate the schemes available.
Regarding Procurement, Government departments are not fostering and building capacity of officials to design and develop specifications that will be clear-cut to bidders to permit fair assessment of bids and responsiveness by suppliers, in particular from black-owned enterprises. This	SMEs are reluctant to enter the government procurement sector due to the bureaucratic complexities of the applications.	• The incorporation of standardised documentation is advised • Education of provincial and municipal officials in correct and transparent tender procedures via an education programme. • A supplier framework

SME Development Constraints	Development Implications	Mitigation Options and Recommendations
includes a lack of understanding of uniform application of procurement policies		should be developed by Municipalities to find and develop SME suppliers. • Implementation of a proper monitoring system of procurement policies. • Municipalities need to ensure they involve SMEs in larger procurement projects. • Municipalities could take up the indirect costs of procurement such as sureties to encourage SME participation.
• There is an argument that the B-BBEE codes are complex and add to the cost of doing business in South Africa and are deterring investments. • B-BBEE compliance is complex. Each element, each target and then implementing it correctly while earning maximum points can be extremely time consuming and challenging. Despite the challenges each specific BEE sector has its own unique regulations which further complicate matters.	• Increased uncertainty among SMEs with regards to BBEEE scoring and codes. • Smaller SMEs have less capacity and are finding it difficult to maintain compliance and encounter difficulties in implementing employment equity plans and finding suitably qualified managers. It also found that the lack of support from government and regulatory bodies was limiting progress.	• Government tender official should receive instruction on how to evaluate B-BBEE Credentials for PFMA and PPPFA purposes for all officials involved in the tender process. • Uniform B-BBEE procedures in the various spheres of local government should be encouraged. • Increased support from government and regulatory bodies to ensure SME compliance with B-BBEE is advised.
High property rates, levies and user charges	SMEs are directly impacted by rates, levies and user charges,	• It is recommended that checks and balances that

SME Development Constraints	Development Implications	Mitigation Options and Recommendations
	which may have a disproportionately large effect, due to their small turnover.	are available through the legislation be exercised. Municipalities might need to engage with SMEs before finalising their property rates policies in order to ensure that reasonable levels of rates are put in place. • SMEs should be differentiated from larger industries in terms of rates and levies. • Municipalities may attract SMEs via reduced user charges and other incentives
Current lack of focus on SMEs in terms of water and electricity tariffs.	Increases the cost of doing business for SMEs with small turnovers	It is recommended that municipalities provide for special exemptions in instances where water and electricity is the primary input for SME's business activities.
Land zoning and Town Planning complexities and rigidity, as well as lengthy re-zoning applications.	Discourages SMEs from developing properties and adds to the financial burden faced by SMEs. Lengthy turnaround times in application processes further discourages SMEs.	• Reduce the turnaround time for re-zoning applications, as well as simplify the approval process. • Introduce mechanisms to implement 'blanket rezoning or consents' in areas where a forward plan may propose business use. This would circumvent the need for SMEs to seek land use approval when developing in certain

SME Development Constraints	Development Implications	Mitigation Options and Recommendations
		allocated business areas. • Closer integration between environmental and land use approval processes is needed. • Alternative means of administering regulations should be investigated, such as neighbourhood councils acting as development control agents.
Several policy capacities are in need of proper definition, concerning their national, provincial and municipal roles. Also, most of the SME support institutions are too supply-driven, which beleaguers SMEs instead of assisting them.	SMEs become bogged down by the myriad of options, but also develop a dependent relationship on support services, thereby reducing growth prospects.	A market development approach to business development services is proposed which treats SMEs like customers. These services should be free functioning market mechanisms based on supply and demand. This means that interventions are limited, meaning the assistance is temporary until the SME matures.

4.6. Concluding remarks

The aim of the study was to investigate the regulatory framework, as well as the applicable requirements for registering a business in the Free State. The data suggests that there are numerous legislative and other compliance issues SMEs must comply with. In any country over-regulation of the SME environment is detrimental to business development and job creation. However, indications are that government is endeavouring to stimulate business growth and entrepreneurship via new and innovative strategies and policies. Some of the most salient aspects in this regard is the red tape reduction initiatives by both National and Free State provincial governments which aim to ease the burden of doing business, thereby transforming red tape into smart tape. Furthermore, various tax incentives and business development initiatives seek to create an enabling environment for SMEs to conduct and expand business.

The stock take proposes various other mitigation strategies to relieve the burden of compliance and financial commitments on SMEs. Only through a business friendly policy environment can the Free State Province hope to attract and retain the essential business acumen necessary to assist in the alleviation of poverty and the eradication of inequality and unemployment.

Finally, the “*Guidelines for Reducing Municipal Red tape – how municipalities can Improve Service Delivery that Support Small Business*” published by the dti and cogta (2013) will go a long way in supporting municipalities in their efforts to create a legal and regulatory framework in support of SME development.

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The South Africa SME Observatory is a public-private-partnership established to inform evidence based advocacy and policy making for SME development. The Observatory is located at the Centre for Development Support at the University of the Free State

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