REGULATORY COMPLIANCE MANUAL

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Regulatory Compliance Manual

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REGULATORY COMPLIANCE MANUAL: INTRODUCTION

Scope:

To provide insight as to the broad variety of disciplines that are required to be adhered to by all businesses in South Africa. Although these rules and processes are often not nice to have, they are legal compliance areas that are provided for in South African law and must be adhered to.

This manual is not intended to supersede the detail provided for in the various legislative acts but merely to provide an improved awareness for every business as well as be a guide in terms of the costs associated with the various forms of compliance so that the business may budget appropriately.

What are laws and regulations?

Laws are actually rules and guidelines that are set up by the social institutions to govern behaviour. These laws are made by government officials. Laws must be obeyed by all, including private citizens, groups and companies as well as public figures, organisations and institutions. Laws set out standards, procedures and principles that must be followed. Regulations can be used to define two things; a process of monitoring and enforcing legislations and a written instrument containing rules that have law on them.

What is regulatory compliance?

In general, compliance means conforming to a rule, such as a specification, policy, standard or law. Regulatory compliance describes the goal that a business aspires to achieve in their efforts to ensure that they are aware of and take steps to comply with relevant laws, policies, and regulations.

Why is compliance important to a business?

When it comes to a business and corporate management, compliance refers to the company obeying all of the legal laws and regulations in regards to how they manage the business, their staff, and their treatment towards their consumers. The concept of compliance is to make sure that business acts responsibly and within the ambit of the law.

Risks of non-compliance?

Today's business owners have a wide array of concerns, not the least of which is turning a profit in what can be a volatile economy. However, financial success is of little consequence if the government compels you to dissolve your company for failing to comply with legal requirements.

Regulatory compliance involves adhering to a wide range of laws and standards designed to protect a business' agents, employees and other stakeholders. From obeying safety guidelines, to following standards for payment of wages, etc., businesses must comply with several laws and regulations at all times.

Because of the vast number of government guidelines for compliance, it can be easy for business owners to find themselves in violation, leaving their companies open to penalties and even dissolution. Having a complete and thorough understanding of corporate compliance is crucial to protecting one's business future sustainability.

How does the RMI assist with Regulatory compliance?

In general, compliance means conforming to a rule, such as a specification, policy, standard or law. Regulatory compliance describes the goal that organisations aspire to achieve in their efforts to ensure that they are aware of and take steps to comply with relevant laws, policies, and regulations. Due to the increasing number of regulations and need for operational transparency, organisations are increasingly adopting the use of consolidated and harmonised sets of compliance controls. This approach is used to ensure that all necessary governance requirements can be met without the unnecessary duplication of effort and activity from resources.

To this end the RMI aims at providing assistance in managing risks associated with regulations and the challenges of meeting regulatory requirement for its members.

Our Regulatory Compliance department will aver to assist members to identify the laws, rules, codes and standards applicable to their operating environment in order to provide the necessary advice on all compliance issues.

CIPC (COMPANIES AND INTELLECTUAL PROPERTY COMMISSION):

The Companies Intellectual Property Commission (CIPC), which replaced Companies and Intellectual Property Registration Office in May 2011, is responsible for registration of businesses, cooperatives and intellectual property rights. It is usually one of the first points of call for business owners.

The new Companies Act 71 of 2008 requires all companies (and close corporations) to submit an annual return to enable the CIPC to have on record the most relevant and recent information pertaining to that company.

This annual return consists of a prescribed form that summarises the required information, together with the payment of the applicable annual fee. The annual return must be lodged within 30 business days following the anniversary date of the incorporation of the company.

The prescribed forms

The prescribed form CoR30.1 must be completed and can only be submitted online to the CIPC. The following compulsory information must be submitted together with the annual return or within 20 business days after submission of the return:

- Certified copies of the identity documents of all the directors, AND
- A copy of the latest audited financial statements, or a properly completed form CoR30.2 in the case of a company (or close corporation) that is not required to file audited or independently reviewed annual financial statements.

The prescribed fees

The prescribed fees that are payable with the annual returns are:

Companies	**R**
Annual turnover less than R1 million	100,00
Annual turnover above R1 million but less than R10 million	450,00
Annual turnover above R10 million but less than R25 million	2 000,00
Annual turnover above R25 million	3 000,00

Close Corporations	**R**
Annual turnover less than R50 million	100,00
Annual turnover equal to/above R50 million	4 000,00

The consequences of non-lodging and non-payment

If a company fails to submit the annual return by the due date, the following penalties will be levied by the CIPC:

Companies	R
Annual turnover less than R1 million	50,00
Annual turnover above R1 million but less than R10 million	150,00
Annual turnover above R10 million but less than R25 million	500,00
Annual turnover above R25 million	1 000,00

Close Corporations	R
Annual turnover less than R50 million	150,00
Annual turnover equal to/above R50 million	150,00

Registration:

Should you wish to register with CIPC please click on the link below and follow the directed processes:

https://eservices.cipc.co.za/Customer_register_id.aspx

TRADEMARKS

Trademarks in South Africa are regulated by the Trade Marks Act, 1993 (Act 194 of 1993).

A trademark is a brand name, a slogan or a logo. It identifies the services or goods of one person and distinguishes them from the goods and services of another.

When a trademark (brand name, slogan or logo) has been registered, nobody else can use this trademark or one that is confusingly similar. If this happens, legal action may result.

A registered trademark establishes ownership over the brand, name or logo. It protects your brand from any unauthorised use by the third party. The registered trademark proves that the product totally belongs to you, and you have exclusive rights to use, sell, and modify the brand or goods in whichever manner you want.

Must a Trademark be registered?

A trademark can only be protected as such and defended under the Trade Marks Act, 1993 (Act 194 of 1993) if it is registered. Unregistered trademarks may be defended in terms of common law. The registration procedure results in a registration certificate that has legal status, allowing the owner of the registered trademark the exclusive right to use that mark.

In South Africa, CIPC administers the Register of Trademarks which is the record of all the trademarks that have been formally applied for and registered in the Republic of South Africa.

What is the lifespan of a trademark?

A registered trademark can be protected forever, provided it is renewed every ten (10) years upon payment of the prescribed renewal fee.

A trademark is registrable if:

- It serves the purpose of distinguishing the goods/services of one trader from those of another trader.
- It does not consist exclusively of a sign or an indication that may serve, in trade, to designate the kind, quality, quantity, intended purpose, value, geographical origin or other characteristics of your goods or services, or the mode or time of their production or of rendering of the services.
- Has not become customary in your field of trade.
- It does not represent protected emblems such as the national flag or a depiction of a national monument such as Table Mountain.
- It is not offensive or contrary to the law or good morals or deceptive by nature or way of use.
- There are no earlier conflicting rights.

Should you wish to register a trademark you may do so by visiting the **CIPC website on this link** http://www.cipc.co.za/index.php/trade-marks-patents-designs-copyright/trade-marks/ho/ and following the necessary processes for trademark registrations.

Please note that certain fees do apply for trademark registration.

COMPANY TAX:

If you are self-employed or a business owner, you have to pay company tax in South Africa. How much business tax you pay and what deductions you can claim will depend on the size and type of business.

What is company tax?

Company tax (also called, "corporate income tax") is what keeps our economy functional. There exists different business categories, which all have to go through registration procedures and have to pay tax. Tax is a rather complicated matter, which is why a lot of people choose to rather pass it on to professional business accountants.

Who needs to pay company tax?

All registered businesses in South Africa have to pay company tax on their worldwide income to SARS. Companies based outside of South Africa, but operating in South Africa, must pay tax on income derived from within South Africa only. The type of companies that have to pay company tax in South Africa include:

- listed and unlisted public companies
- private companies
- close corporations
- co-operatives
- collective investment schemes
- small business corporations
- share block companies
- body corporates
- public benefit companies
- dormant companies

What steps must be taken?

1. Register as a taxpayer

Every business liable to tax under the Income Tax Act, 1962, must register with SARS as a taxpayer. You can register once for all different tax types, using the client information system. Registration can be done by clicking on the following link https://secure.sarsefiling.co.za/loggedon_default.asp?reg=1

2. Submit annual tax return

Every registered taxpayer must submit a return of income twelve months after the end of the financial year. Returns can be submitted electronically or manually via SARS.

3. Submit provisional tax returns

Every company must submit provisional tax returns. Your first provisional tax return must be submitted six months from the start of the year, and the second at year-end, and must contain an estimate of the total taxable income earned or to be earned for that period. Payment of the tax must accompany the return. A third "top-up" payment may be made six months after year-end.

V.A.T:

VAT stands for Value Added Tax and is a tax that most companies need to collect on behalf of the South African Revenue Service (SARS).

Definitions:

-Output VAT: This is the VAT that you charge all of your customers in any month. If you add up all the VAT amounts on all your invoices for the month you will get your total Output VAT.

-Input VAT: This is the VAT that all your suppliers charge you in any month. If you add up all the VAT amounts on all the invoices that your suppliers have given you, that will give you your total Input VAT.

-VAT payable: This is output VAT less input VAT and is the amount that need to be paid to SARS.

When and how to pay

Normally every two months, you will need to get the total Output VAT for the two months and from that subtract the two-month total of Input VAT. This amount is what you need to pay over to SARS by the 25th of the following month. Don't delay payments, the penalties and hassles are just not worth it. In any event, you are simply collecting the tax on the government's behalf, the money was never yours. If you had been including it in your sales or your costing, you've been making some accounting errors.

SARS have gone the extra mile with their "efiling" program. This means that you can fill out the VAT form and transfer the funds from your PC via the internet. There are no queues or long distances to travel. You are also able to pay a few days later than the manual submission process allows. Take a look at the SARS website for more information.

Who must register?

You only have to register for VAT if your turnover exceeds or is likely to exceed R300'000 in any one year. However, you can voluntarily register as long as your turnover has already exceeded R20'000 in the current year. You cannot charge VAT unless you are registered to do so with SARS. You can register by completing some forms at your local SARS office or you can find the forms and procedure on their website.

a) Compulsory registration

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. The threshold is currently R1 million in any consecutive 12-month period.

b) Voluntary registration

A person can register as a vendor if that person carries on an enterprise where the total value of taxable supplies (taxable turnover) exceeds R50 000 (but does not exceed R1 million) in the preceding 12-month period.

c) Refusal of registration

You will not qualify to register as a vendor if you do not fall within these categories. In all other instances, no VAT registration will be allowed if the annual turnover is below the minimum voluntary registration threshold.

How to register for VAT

Application for registration as a vendor must be made, on form VAT101 (obtainable from your local SARS office or on the SARS website), within 21 days of becoming liable to register. The reference guide available on the SARS website will assist you in the completion of the VAT101 form.

Submission of VAT returns

VAT may be submitted manually or electronically, and payment can be made manually, electronically or at any one of the four major banks.

EMPLOYEE TAX (P.A.Y.E) :

- An employer, as an agent of government, is required to deduct employees' tax from the earnings of employees and pay the amounts deducted over to SARS on a monthly basis.
- The employees' tax is not a separate tax but forms part of the Pay-As-You-Earn (PAYE) system. The employees' tax deducted serves as an income tax credit that is set off against the final income tax liability of an employee, calculated on an annual basis to determine an employee's final income tax liability for the year of assessment.
- Every employer who pays remuneration to an employee must register as an employer for employees' tax purposes. That means that any business that pays a salary or a wage of any value to any person who qualifies under the definition of 'employee' must register with SARS for employees' tax purposes within 14 days after becoming an employer.
- This is done by completing an EMP 101 form and submitting it to SARS. The EMP 101 is available at all SARS offices and on the SARS website or you may download form the following link here: https://www.sars.gov.za/wp-content/uploads/Ops/Forms/EMP101e-Application-for-Registration-PAYE-SDL-UIF-External-Form.pdf
- Once registered, the employer will receive a monthly return (EMP 201) that must be completed and submitted together with the payment of employees' tax and UIF contributions (if applicable) within seven days of the month following the month for which the tax was deducted.
- Employers' who fail to comply with the above would be liable to penalties from SARS. Penalties for late payment is 10% of the amount owing and an addition, the combined amount (the amount due plus the penalty amount) is subject to interest at the prescribed rate used by SARS – and this interest charge is levied *each month* that the payment is late.

UIF:

What is UIF?

The Unemployment Insurance Fund (UIF) gives short-term relief to workers when they become unemployed or are unable to work because of maternity, adoption leave, or illness. It also provides relief to the dependants of a deceased contributor.

The unemployment insurance system in South Africa is governed by the following legislation:

- Unemployment Insurance Act, 2001 (the UI Act)
- Unemployment Insurance Contributions Act, 2002 (the UIC Act)

These Acts provide for the benefits, to which contributors are allowed, and the imposition and collection of the contributions to the UIF, respectively, and came into operation on 1 April 2002.

Who is it for?

All employees, as well as their employers, are responsible for contributions to the UIF. However, an employee is excluded from contributing to the UIF if–

- Employed by the employer for less than 24 hours a month.
- Receives remuneration under a contract of employment as contemplated in section 18(2) of the Skills Development Act, 1998 (Act No.97 of 1998).
- Employed as an officer or employee in the national or provincial sphere of Government.
- Entered the Republic for the purpose of carrying out a contract of service, apprenticeship or learnership within the Republic. If upon termination, the employer is required by law or by the contract of service, apprenticeship or learnership, or by any other agreement or undertaking, to send home that person, or if that person needs to leave the Republic.
- The President, Deputy President, a Minister, Deputy Minister, a member of the National Assembly, a permanent delegate to the National Council of Provinces, a Premier, a member of an Executive Council or a member of a provincial legislature or,
- A member of a municipal council, a traditional leader, a member of a Provincial House of Traditional Leaders and a member of the Council of Traditional Leaders.

All employers must ensure that their businesses and their employees are registered for UIF and that the contributions are paid over monthly.

How much do you need to pay?

- The amount of the contribution due by an employee, must be 1% of the remuneration paid by the employer to the employee.
- The employer must pay a total contribution of 2% (1% contributed by the employee and 1% contributed by the employer) within the prescribed period.

Registration:

There are different ways in which you can register with the UIF in order to comply with HR legislation in SA.

- Registering by e-mail:
    - complete forms UI-8 (details of employer or employer representative)
    - the UIF will create a unique reference number and it will be forwarded to you
    - You must e-mail the forms to the UIF at webmaster@uif.gov.za
- Registering by telephone:
    - you must have a household physical address and the ID numbers of all your employees before phoning the UIF
    - Phone the UIF at (012) 337 1680 and follow the instructions from the voice prompt.
- Sending forms through mail:
    - You can mail completed forms to the UIF at: The UIF, 94 Church Street, Pretoria, 0052 or PO Box 1851, Pretoria, 0001
- Registering at a labour centre:
    - go to your nearest labour centre
    - complete forms UI-8, UI-19 and UI-8D (if applicable)
    - bring ID numbers of your employees and the physical address of the business/household
    - The UIF will create a unique reference number and it will be forwarded to you.

COIDA:

Every company that employs one or more persons must register with the compensation fund. This was previously known as workman's compensation.

An employer must register with the Commissioner within seven days after the day on which he/she employs his/her first employee. An employer must register with the Commissioner by submitting Form W As 2 with the particulars required therein to the Commissioner. These forms are available on the website of the Department of Labour. Employers must make sure that they fill in all the questions on the form. During registration, copies of the following documentation should be included:

- the registration certificate from the Register of Companies if they are a company or closed corporation;
- or their ID document, if they are sole owners of the business.

Every year in March, each employer has to fill out a form indicating the salaries and wages that have been paid out and what they estimate will be paid out over the next year. The fund will then bill the employer a percentage of these wages once a year (normally around May / June). The employer may not deduct this amount off the employee pay, instead it is for the company's account.

The money for this fund is used to pay medical bills for employees who are injured in an accident during the course of doing work for the company. There are also amounts payable if disability or death arise from the accident. The fund will also protect the employer from civil claims in the event of such a work-related injury.

Every three years, the fund will pay a rebate back to employers with low or no claims of injuries from the fund.

The Compensation for Occupational Injuries and Diseases Act (COIDA) provides compensation for disablement caused by occupational injuries or diseases sustained or contracted by employees in the course of their employment, or for death resulting from such injuries or diseases.

COIDA applies to all employers, and casual and full-time workers who, as a result of a workplace accident or work-related disease, are injured, disabled, or killed or become ill. When a worker becomes ill, the employer needs to make a notice of this event to the Department of Labour. The employee may then fill in follow up forms and make a statement to start the claim process from this fund.

Forms are available from the Department of Labour: www.labour.gov.za/documents

RAND MUTUAL ASSURANCE (RMA):

RMA has been empowered by the Minister of Labour to administer and manage the requirements of COIDA (Workman's Compensation) for all Section 13 Registered companies in South Africa. This includes all RMI related member businesses (except those who may still be registered under Section 10).

All Retail Motor Industry (RMI) members should be operating as Section 13 companies and therefore should be registered directly with RMA.

RMA is licenced by the Department of Labour to administer the claims for Class 13 employers in terms of COIDA. Effective from 1 March 2015, it is mandatory for all employers within this class to belong to RMA as per the Government Gazette Notice 565 of 2014.

All premiums must be paid to, and claims submitted to, RMA from this date.

The core of RMA's business is the receipt, adjudication and administration of workers' compensation claims, including the payment of medical costs, once-off disability payments and the ongoing payment of pensions in the case of severe disability and death.

The Compensation Fund is responsible for overseeing the compliance of RMA regarding all the requirements of COIDA.

Cost of compliance:

The employer pays premiums to RMA based on the earnings paid to employees. The employer may not deduct any money from an employee's salary or wages towards these contributions.

Employers must submit their return of earnings (ROEs) to RMA by 31 March each year. The penalties for non-submission are in terms of section 83(6) (b) of COIDA. On receipt of your ROEs, RMA will auto generate an invoice for the premium payment. Section 86(1) of COIDA prescribes that an invoice is payable within 30 days after the date of the notice of assessment (30 days of the invoice date) or in agreed to instalments at times and on conditions as determined. Once payment has been received and cleared, RMA will generate a Letter of Good Standing for your company.

How to register:

- Step 1: Visit the RMA website at: www.randmutual.co.za
- Step 2: Click on the orange "Online Services" tab and then the "Register for Online Services" link.
- Step 3: Complete the online registration form and click "Register" once completed. Class XIII members, please use your BP number as the CF reference number.
- Step 4: RMA's system will automatically email a username, password and authentication key to your registered email address. The authentication key is used to submit the earnings declarations and claims. You will find this key as an attachment to the email which you need to save for future use by right clicking on the file and clicking on "Save As" to save it in your selected folder. Please note that due to the confidentiality of the key, it will not allow you to copy and paste.

SKILLS DEVELOPMENT LEVY (SDL):

The skills development levy was introduced a few years ago by the government in order to raise funds to train and skill workers. Generally speaking, if your total annual salary bill for the company exceeds R250'000 then you need to register for SDL and pay the levy each month.

First you need to register with SARS. When doing so you will need to select a SETA (Sector Education and Training Authority) which best describes or suites your business. For example: are you in financial services, plastic manufacturing or IT. You will then be allocated to this SETA and will be able to use their services.

Costs:

You will need to pay an amount equivalent to 1% of your total salary bill (including overtime payments, leave pay, bonuses, commissions and lump sum payments) each month by completing the following: https://www.sars.gov.za/types-of-tax/pay-as-you-earn/emp-201-completion/

Please note you cannot deduct this from your staff's pay.

The levy must be paid within seven days after the end of the month during which the amount was deducted. If the last day for payment falls on a public holiday or weekend, the payment must be made on the last business day before the public holiday or weekend.

The amounts deducted or withheld by the employer must be paid to SARS on a monthly basis. Once you are up and running it is a good idea to contact your particular SETA or view their website. Here you will find information on how to get some of your levy back in the form of rebates or grants, provided that you set up an education and training program for your staff. Some SETAs even offer free courses or at least provide relevant and topical courses for their members (your staff). A well trained and educated staff is certainly a beneficial asset for your company.

EMPLOYMENT EQUITY:

The purpose of the Employment Equity Act, No 55 of 1998 is to achieve equity in the workplace by promoting equal opportunity and fair treatment in employment through elimination of unfair discrimination and implementing affirmative action measures to redress the disadvantages in employment experienced by designated groups, in order to ensure equitable representation in all occupational categories and levels in the workforce.

This Act provides for additional reporting requirements employers with the additional burden of submitting an Employment Equity Report.

All designated employers must, in terms of Section 21 of the Employment Equity Act of 1998 submit their annual report annually.

Who are designated employers?

Designated employers include the following:

- Employers who employ 50 or more workers;
- Employers who employ less than 50 workers, but has a total annual turnover that is equal to or above R45 million in the Retail, Motor trade and Repair services.
- An employer bound by a collective agreement, appointed as a designated employer in terms of the Employment Equity Act;
- Municipalities; and
- Organs of State.

CHECK YOUR COMPLIANCE

In terms of section 19 of the Employment Equity Act, all organisations with more than 49 employees **or** with a turnover in excess of the turnover threshold in Schedule 4 of the Act must comply.

The current threshold for the Retail and Motor Trade and Repair Services is total annual turnover of R 45 million.

RISKS OF NON- COMPLIANCE:

If an organisation is found guilty of contravening the EEA, maximum fines imposed will be from R500 000 for a first offender and up to R1 500 000 or 10% of the turnover for multiple offenders. In instances, where an organisation has reported an EE plan, but do not communicate it or apply it, there will be possible imprisonment to a maximum of 10 years.

OCCUPATIONAL HEALTH AND SAFETY:

The Occupational Health and Safety Act (OHSA) requires the employer to provide a work environment that is safe and without risk to the health of employees. The act applies to all employers and while it's not compulsory for all organisations to have a health and safety policy as an employer, you are duty-bound to inform employees of work-related risks and dangers. The Act aims to: **secure the health, safety and welfare of employees and other people at work**; protect the public from the health and safety risks of business activities; eliminate workplace risks at the source.

A health and safety policy is therefore a valuable tool. Policy documents also provide direction for all company activities, as well as criteria to measure and evaluate efficiency.

Developing a Health and Safety Policy

The primary objective of a health and safety policy is to prevent or reduce work-related incidents and occupational diseases. There are no hard and fast rules about what to include in a policy, but a good one will indicate how the organisation protects those who could be affected by its activities and be broad enough to cover all activities.

Some of the key elements of a workplace health and safety policy include:

- an acknowledgement of the right of every employee to work in a safe and healthy environment
- the organisation's basic health and safety philosophy (statement of health and safety principles and goals)
- the general responsibilities of all employees
- that health and safety shall not be sacrificed for expediency
- that unacceptable performance of health and safety duties will not be tolerated

Risk of non-compliance:

Every employee is valuable, therefore all employees who are exposed to hazards in the workplace are entitled to proper health and safety assistance programmes. Penalties for failure to comply with the prescripts of the OHSA include fines and imprisonment with a criminal record. It is important to know that where non-compliance leads to injury or a casualty, the employer could be held liable. For compliance purposes, the employer must provide effective leadership in health and safety management and demonstrate management commitment by allocating sufficient resources for workplace health and safety.

As can be seen from above, when an employer fails in his duties, he is in contravention of the OHSA, which is a Statutory Law, in which case he may be held criminally liable and prosecuted in his personal capacity.

LABOUR RELATIONS ACT:

This Act sets out the laws that govern labour in South Africa. It is guided by Section 27 of the Constitution (https://www.justice.gov.za/legislation/constitution/saconstitution-web-eng.pdf) which entrenches the rights of workers and employers to form organisations for collective bargaining. Together with the Basic Conditions of Employment Act, it also ensures social justice by establishing the rights and duties of employers and employees. It also regulates the organisational rights of trade unions' deals with strikes and lockouts, workplace forums and other ways of resolving disputes. It provides a framework for the resolution of labour disputes through the Commission for Conciliation, Mediation and Arbitration (CCMA), Labour Court and Labour Appeal Court.

Who is this Act for?

This Act applies to all employers, workers, trade unions and employers' organisations. It does not apply to members of the:

- National Defence Force,
- National Intelligence Agency, or
- South African Secret Service.

MIBCO:

The Labour Relations Act Provides for the self-regulation of Industries through the medium of Bargaining Councils. MIBCO is a Bargaining Council as envisaged in the Act whose mission is to create and maintain industrial peace and stability in the Motor Industry.

The Motor Industry Bargaining Council is a compulsory registration for motor industry related businesses in South Africa, in terms of the Labour Law as administered by the Department of Labour.

Established to protect both employers and employees rights, where specific conditions fall outside of the BCEA (Basic Conditions of Employment Act.)

MIBCO provides the following services:

- A forum and facilities for Collective Bargaining;
- Settlement of Labour Disputes through the Dispute Resolution Centre (DRC);
- Administration of Social Benefits in the Motor Industry, such as Provident, Sick, Accident, Maternity and Holiday Pay Funds.

Every three years the terms and conditions in the Motor Industry are negotiated by the parties to MIBCO. Once agreed and signed, the agreement goes to the Minister of Labour for approval and to have the agreement signed and promulgated.

It is in the discretion of the Minister to extend the agreements reached to those parties who did not sign the agreement as well as all employers and employees in the industry who do not belong to a union and/or employers' organisation.

These agreements are in line with the Acts in South Africa and may only be similar to or more beneficial than the Basic Conditions of Employment Act 75 of 1997.

As Bargaining Councils are not funded by the State, all employers and their employees pay a monthly levy for the funding of the Council.

In summary, all employers and employees in the Motor Industry are all governed by MIBCO and the MIBCO Collective Agreements.

MUNICIPAL BY-LAWS:

Municipal By-laws are laws that are adopted by the council of a municipality to regulate the affairs and services within the jurisdiction of the municipality. A municipality derives the power to adopt a by-law from the Constitution of the Republic of South Africa, 1996.

Municipal by-laws form part of the legal foundation for effective service delivery and cooperative communities within South Africa. These by-laws hold the same power and force as other national and provincial legislation.

By-laws bind both the municipality (political and administrative structures) and the community (including residents, ratepayers, non-governmental organisations, **the private business sector,** and labour organisations). By-laws offer a means of controlling human- and corporate behaviour because they are directly enforceable and compliance with by-laws is mandatory.

The effectiveness of by-laws lies in their ability to be tailor-made to local circumstances. Cities can pass by-laws to deal with their specific circumstances, provided the by-laws do not conflict with national legislation and relate only to local government functions. This means that by-laws will differ from municipality to municipality and as a responsible business owner, you have an obligation to familiarise yourself with the by-laws of the particular municipality you trade in and operate in compliance with those by-laws.

What happens if you contravene a municipal by-law?

Considering that by-laws differ in various municipalities, it stands to reason that the consequences of non-compliance with a particular by-law would also differ depending on the municipality you are in and the by-law itself. In a broader sense, it would be important to note that contravention of a municipal by-law could lead to a fine or imprisonment in some cases. By-laws are usually enforced through inspections by appointed municipal officials who will randomly visit your place of business. Therefore, it is imperative that you are fully aware of all the by-laws you need to comply with in your respective municipality and the consequences for non-compliance.

How to find the municipal by-laws that apply to you?

Ignorance of the law is no excuse, which is all well and good provided you can find the law, and this is definitely the case for municipal by-laws. Unfortunately, you would have to consult your specific municipality to access the by-laws. You may do this by visiting the specific municipality's website (should they have one) or contacting them directly.

Alternatively, an organisation called **“Open bylaws”** has tried to consolidate most municipalities' by-laws on an open platform. There are currently limited municipalities listed, however, you may visit their website at http://openbylaws.org.za/ to check if your municipality is there.

FICA:

The Financial Intelligence Centre Act, 38 of 2001 (**FICA**), came into effect on 1 July 2003. **FICA** was introduced to fight financial crime, such as money laundering, tax evasion, and terrorist financing activities. FICA creates money laundering control obligations for banks and other institutions and professionals, such as estate agents, brokers, attorneys and insurance companies. Customer identification is a crucial element of any effective money laundering control system. The banks have implemented measures for them to know who their customers are and to prevent criminals from using false or stolen identities to gain access to our services.

Registration requirements:

Who

Registration with the Financial Intelligence Centre (FIC) is a legal requirement applying to all accountable and reporting institutions listed in Schedules 1 and 3 of the FIC Act, respectively. Schedule 3 more specifically deals with businesses operating within the motor industry.

Why

Registration with the FIC is a legal obligation in terms of the FIC Act, as amended. Registration with the FIC enables accountable and reporting institutions to fulfil other FIC Act compliance obligations.

The failure to register with the FIC or the failure to update registration information when it has changed are offences, and may result in **imprisonment** for a period not exceeding five years and/or a fine not exceeding **R10 million**.

When

Persons who commence new businesses which are regarded as accountable or reporting institutions are required to register with the Centre within 90 days from the date the business commenced.

How

All registrations must be completed and submitted to the FIC electronically within the prescribed period using the goAML registration system.
There is **no cost** to register the business. The process is easily done on the FIC website.

Documents required

To view the various documents required for different entities in terms of FICA, please click on the below link:

https://www.psg.co.za/support/faq/general/fica-documents-required

G.A.A.P and IFRS:

Generally accepted accounting principles (GAAP) refer to a common set of accounting principles, standards and procedures that companies must follow when they compile their financial statements. GAAP is a combination of authoritative standards (set by policy boards) and the commonly accepted ways of recording and reporting accounting information. GAAP improves the clarity of the communication of financial information.

However, the Accounting Practices Board (APB) and the Financial Reporting Standards Council (FRSC) issued a joint communication during March 2012 reflecting their decision to discontinue the use of SA GAAP. Effective from annual periods commencing on or after 1 December 2012, companies are no longer allowed to apply SA GAAP. Companies at that stage applying SA GAAP therefore needed to consider the financial reporting framework that will be appropriate for them to apply in future - the choices of IFRS or the IFRS for SMEs.

The International Financial Reporting Standard for Small and Medium-sized entities (the IFRS for SMEs) was developed by the International Accounting Standards Board (IASB) in recognition of the difficulty and cost to private companies of preparing financial statements that are compliant with full IFRS. The IFRS for SMEs recognises that the users of private entity financial statements may have a focus that is different from that of users of the financial statements of listed or other publicly accountable entities.

The IFRS for SMEs is aimed at entities that:

- do not have debt or equity instruments traded in a public market
- do not hold assets in a fiduciary capacity for a broad group of outsider, and
- prepare general purpose financial statements

CONSUMER PROTECTION ACT (CPA):

The primary objective of the Consumer Protection Act is to establish consumer rights and provide free, effective and efficient enforcement of those rights through the establishment of the National Consumer Commission (NCC), the National Consumer Tribunal (NCT), accredited industry ombudsman schemes such as the Motor Industry Ombudsman and the Consumer Goods and Services Ombudsman, other ombudsman with jurisdiction, the provincial consumer authorities and provincial consumer courts. Since all businesses are primarily designed to serve consumers, the Consumer Protection Act is just as vital as any other legislation governing business in South Africa.

In essence, The Consumer Protection Act spells out the rights of the consumer and the responsibilities of the supplier.

The Consumer Protection Act applies to the following:

• Every transaction occurring within the Republic of South Africa

• Goods or services that are supplied or performed, in the Republic, in terms of transactions mentioned in the Act.

By not complying with the Act, businesses open themselves up to legal action from consumers. Even if a business wasn't aware that their actions didn't comply with the Act, they could still be found guilty of wrongdoing. The consequences could include fines, hefty legal costs, and settlements.

Any person convicted of an offence in terms of the CPA would be liable for a fine or imprisonment for a period not exceeding 12 months, or both a fine and imprisonment.

Not adhering to the Act could result in serious damage to the reputation of a business. An unhappy consumer is rarely good for business, especially in an age where people's views spread like wildfire over social media. This could have a devastating impact on the size of the customer base and the profitability of a business, so ethical business owners have to ensure that their actions comply with the law.

MIOSA:

The Motor Industry Ombudsman of South Africa.

MIOSA was established by the Department of Trade and Industry in 2015, to provide a process for Consumer Dispute Resolution within the Motor Industry. This was alongside the provisions of the CPA (Consumer Protection Act).

The Motor Industry Ombudsman of South Africa (MIOSA) is a totally independent institution that focuses on the resolution of disputes where a deadlock has been reached between the motor and related industries and their customer.

The costs associated with the levies imposed by the Ombudsman are not determined by the RMI nor does the RMI have any managerial input into the MIOSA structures.

All businesses operating within the motor industry are compelled to pay a levy to MIOSA.
The levies are as follows:

1. Manufacturers/Importers/Distributors: Consumer interactive (Parts/Components/Accessories/Products):
   Monthly: R 4100.00 (incl. VAT)
   Annually: R 49200.00 (incl. VAT)

2. Manufacturers/Importers/Distributors: Supplying directly to Vehicle Manufacturers/OEM's/the aftermarket/the trade (Parts/Components/Accessories/Products):
   Monthly: R245.00 (incl. VAT)
   Annually: R2940.00 (incl. VAT)

3. Dealers/Service Providers:
   Monthly: R215.00 (incl. VAT)
   Annually: R2580.00 (incl. VAT)

Risk of non-compliance:

Please note that non-registration and payment can result in interest penalties payable, calculated from date of registration which should be before the 28th of February 2015 and may be added to the list of non-payment offenders which will be submitted to the Consumer Protection Commission, the Provincial Courts, the National Consumer Tribunal and the Minister of Trade and Industries for follow up.

To register you may follow the prompts on this link: http://register.miosa.co.za/php/home.php

NATIONAL CREDIT ACT:

The National Credit Act (Act) was promulgated on 15 March 2006. The Act aimed to transform the South African credit industry by introducing a consistent regulatory and enforcement framework to "promote a fair and non-discriminatory marketplace for access to consumer credit". The impact of the Act on the banking industry and other credit providers such as retailers and micro lenders is both extensive and significant. All credit providers will have to comply fully with the Act from 1 June 2007.

The NCA applies to credit agreements with all consumers, and to entities **such** as close corporations, companies, partnerships and trusts, whose asset value or annual turnover is below a prescribed threshold (currently R1 million).

The Act has inevitably changed the way in which credit providers extend credit. In the process there have been compliance costs as credit providers have:

- ensured their existing and new standard agreements comply with the Act;
- put pre-agreement processes in place – affordability assessments and quotations;
- checked and updated their systems to ensure that only permitted interest and fees are calculated and charged and to keep necessary records to compile statistical returns and compliance reports;
- aligned their marketing and selling practices with the requirements of the Act; and
- trained staff to understand and comply with the requirements of the Act.

NRCS:

National Regulator for Compulsory Specifications (NRCS) was established on 1 September 2008, in accordance with the provisions of the National Regulator for Compulsory Specifications Act, (Act no.5 of 2008) (NRCS Act). It emerged as an independent organisation from the original Regulatory Division of the South African Bureau of Standards and falls within the area of responsibility of the Department of Trade and Industry (the dtic).

The NRCS's mandate includes promoting public health and safety, environmental protection and ensuring fair trade. This mandate is achieved through the development and administration of technical regulations and compulsory specifications as well as through market surveillance to ensure compliance with the requirements of the compulsory specifications and technical regulations. NRCS stakeholders include the South African Government, industry and the citizens.

Are there any fees paid?

Yes, fees are paid in the form of levies and services fees for services rendered. Fees payable are gazetted and are reviewed from time to time in consultation with the stakeholders.

To view fees applicable to specific products, you may follow the link below:

https://www.nrcs.org.za/levy/levy-tariffs

SABS:

SABS is a 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. 8 of 2008) as the national standardisation institution in South Africa, mandated to:

- Develop, promote and maintain South African National Standards (SANS)
- Promote quality in connection with commodities, products and services
- Render conformity assessment services and assist in matters connected therewith.

The SABS provides the platform for quality services and products which is the key differentiator in an increasingly competitive environment. The SABS strategic objective contributes to the efficient functioning of the economy by:

- Developing standards to advance the socio-economic well-being of South Africa in the global economy.
- Delivering relevant conformity assessment services that facilitate access to markets for South African industry, thereby improving its competitiveness in the global trade environment.

The SABS, with its rich history in standardisation, will continue to play a significant role in ensuring that industry is kept abreast of the pace of the dramatic transition of the world economy through standards development and quality assurance services, thereby providing industry with the quality edge.

BUSINESS BENEFITS:

- Measurable improvement in product and service quality
- Decrease in products not adhering to standards, so reducing faulty product returns and loss of reputation
- Improvement of esteem in the marketplace
- Increase in competitive edge
- Improvement in internal communication
- Improvement in quality awareness, and cultivation of a quality culture
- Improvement in record keeping and control systems, leading to better decision making
- Greater discipline in processes and procedures
- Improvement in management efficiency
- Certain international specifications are a minimum requirement to enter lucrative first-world markets

Costs:

The SABS Mark Scheme is a certification process by which a third party (i.e. SABS Commercial) gives Assurance that a product fulfils specified requirements. The SABS Mark Scheme applies only to products/commodities for which technical South African National Specifications (SANS) exist.
Should you wish to use the SABS mark on a particular product there would be costs involved.

- You would first need to enquire with the SABS if the product you wish to certify can be certified by them.
- You would then obtain a quotation for certification from the SABS.

- The quotation will consist of pre-permit fees and post permit fees. The pre-permit fees are paid in advance and post permit once the mark has been approved.
- The costs will only be determined once the SABS receive a completed application form that will allow them the opportunity to determine competency and various costs such as: Auditor time, travel, and testing and admin costs. Therefore, costs would vary from product to product.
- Once the product is certified, there is an annual levy to be paid to the SABS. If the business is a credit customer on the SABS database, then they would be allowed to pay monthly fees/recurring invoices to pay off the annual fee before audit and testing for that particular year.
- If the customer defaults during the certification process, they could incur additional cost such re-audit or re-test.

PAIA:

PAIA aims to promote the free flow of information *(That should be public information).*

- PAIA is structured to allow for the application of section 32 of the Constitution of the Republic of South Africa.
- The purpose of this legislation is to promote transparency, accountability and governance both in the private and public sectors.

The need for a manual:

Manual not required if:

- Does your business exceed R45 million turnover per year?
- Do you employ more than 50 people?
- If you answer NO to both of these two criteria, there is no need in the Retail Motor Industry for a manual to be prepared by you or for you. *(note: other industries have varying values associated)*

Manual required if:

- If you answer YES to either or both of the above questions, you will be required to draft a PAIA manual known as a Section 51 Manual with the South African Human Rights Commission (SAHRC)

The manual:

- The manual must contain details of the business such as the postal and street address, phone and fax number and the electronic mail address of the head of the company, at the very least. The manual must also have sufficient details to facilitate a request for access to a record of the business, a description of the subjects in which the business holds records and the categories of the records.
- Should your business require a PAIA manual template, you are welcome to click the following link to download a standard PAIA manual provided by the RMI: https://www.rmi.org.za/download/promotion-of-access-to-information-act-paia-manual/?tmstv=1666174905

Who can request records from a business?

Anyone can ask for records from a private body (business), but the record must be needed for the exercise or protection of a right.

What kind of information can be requested from a business?

- The act defines a record as any recorded information that is in the possession or under the control of that business.
- The act gives the right to request information from businesses, however the right only exists to the extent that the record is required for the exercise and protection of rights.
- The act gives the head of a private body (business) the right to refuse to disclose certain records in certain scenarios, for example the:

-Unreasonable disclosure of private information about a third party

-Trade secrets

-If the disclosure could reasonably expect to endanger the safety of an individual; etc.

POPI (PROTECTION OF PERSONAL INFORMATION):

The POPI Act aims to control the way in which personal information is handled and to regulate how that personal information should be processed, to ensure it is done in a responsible way. This would include the methods of collection, usage, storage, dissemination, alteration and destruction of any personal data and information.

The POPI Act headlines this process by asking you to identify a "processor of information" in your organisation and then to hold them accountable should any information be abused or compromised in any way.

For the most part, the requirements of POPI compliance are self-explanatory and easily implemented. The impending POPI compliance deadlines provide your organisation with an ideal opportunity to review the sort of information and data that you collect to manage all your client interactions, and store and use data for marketing purposes, among other tasks.

The POPI guidelines:

The principles of POPI can be divided into eight practical guidelines that help us understand how we must legally process personal information.
Every company that processes personal information, will need to comply with all eight of the requirements. They are as follows:

1. ***Accountability*** - Your Company will need to determine who will be responsible to ensure compliance with the POPI Act. This person will normally be the director of the company or an Information Officer that is appointed by the company, depending on the size of the business. The natural person responsible for compliance with the POPI Act is known as the Information Officer. Your company can appoint the Information Officer by way of a Director's Resolution.
2. ***Processing limitation*** - Any Personal Information that you collect must be processed lawfully in a reasonable manner that does not infringe on the privacy of a data subject such as your client or marketing database. The personal information may only be collected and processed if it is adequate, relevant, and not excessive. And most importantly, personal information can further only be collected if the data subject consented to it! You can only collect data directly from the data subject.
3. ***Purpose specification***- A company should only collect the information that is necessary for them to fulfil a specific purpose, and it must only be used for lawful purposes. The Information Officer will need to ensure all information is relevant and up to date and should only keep personal information for as long as it is necessary. The company should have limited access to personal information long enough for them to perform the purpose of that data.
4. ***Further processing limitation and data subject participation***- The further processing or use of personal information is expressly prohibited by the POPI Act unless that processing is compatible with the initial purpose of collecting information - or if the further processing of the information is done with the data subject's consent.
5. ***Information Quality***- the Company that processed the information, has a duty to ensure the information is kept up to date, complete and correct. This duty can be transferred to the data subject (owner, client or employee) providing the personal information. The Terms & Conditions or agreements entered into must expressly communicate that it is the data subject's duty to ensure their personal information remains updated and they should communicate any changes to the relevant party within the company.
6. ***Openness***- The data subject can request that the company provide them with the record or a description of their personal information held by the company. Then, the company must

provide this information to the owner of the information within a reasonable time, in a reasonable manner and in a format that is generally understandable. It would be best that the company prepare itself for requests for information by the data subjects. They should have a procedure in place to deal with this type of request. This can be as simple as having the data subject complete and sign a form requesting certain information.

7. ***Security safeguards*** - The POPI Act states that processors of information are responsible for protecting all the personal information they have in their possession. As such, your Information Officer will need to be able to provide proof that they have taken all reasonable steps to ensure that all personal information held is safeguarded. The company should also identify all reasonable and foreseeable internal and external risks to data abuse, theft or loss, and establish and maintain appropriate safeguards.
8. ***Data subject participation***- Data subjects have the right to establish whether personal information is held by a responsible party and to have it corrected or destroyed if it is inaccurate, irrelevant, excessive, out of date, incomplete, misleading or has been obtained unlawfully.

Information Officer:

In order to ensure that your organisation complies with the terms of the POPI Act, you will need to formally appoint an Information Officer.

The appointed Information Officer of the Company is entrusted with the following responsibilities:

- Take steps to ensure the organisation's reasonable compliance with the provision of the POPI Act.
- Keep the Board of the Company updated about the enterprise's personal information protection responsibilities as determined by the POPI Act.
- Ensure that the Company makes it convenient for data subjects who want to update their personal information or submit POPI related complaints to the Company, to do so.
- Approve any contracts entered into with operators, employees and other third parties which may have an impact on the personal information held by the Company. This will include overseeing the amendment of the organisation's employment contracts and other agreements.
- Encourage compliance with the conditions required for the lawful processing of personal information.
- Ensure that employees and other persons acting on behalf of the Company are fully aware of the risks associated with the processing of personal information and that they remain informed about the Company's security controls.
- Organise and oversee the awareness training of employees and other individuals involved in the processing of personal information on behalf of the Company.
- Address employees' questions and queries on the POPI Act or the Company's policies and procedures.
- Address all POPI Act related requests and complaints made by the Company's data subjects.
- Work with the Information Regulator concerning any ongoing investigations. The Information Officer will therefore act as the contact point for the Information Regulator's authority on issues relating to the processing of personal information and will consult with the Information Regulator where appropriate, regarding any other matter.

Basic POPI Act Policy:

This general POPI policy will assist you at a foundational level as you begin to process, analyse and manage the data and personal information you collect. It is vital that this policy is then adapted to suit your unique requirements so that it covers any potential risks.

You will find a complimentary and fillable POPI Policy template at: http://barnardinc.co.za/rmi/

Consequences of non-compliance:

For any party being convicted of an offence in terms of the POPI ACT, the following may apply:

- A maximum period of imprisonment of 10 years
- An undisclosed maximum fine can be levied
- The Regulator may institute administrative fines up to an amount of R10 million.

As usual, **ignorance of the law is no excuse**. Incorporating POPI into the day-to-day operations of your business will most likely require a significant amount of time and effort, including educating and training staff, updating business processes and implementing or updating technology solutions.

SECOND HAND GOODS ACT:

The essence of the Second Hand Goods Act

1. The Act is aimed at regulating dealers who purchase and sell second-hand goods.

2. The Act serves to ensure that the second-hand goods being purchased or sold are:

   2.1 not stolen goods; and
   2.2 to ensure that the dealer does not operate as a pawn broker.

3. The Act has therefore set out certain procedures that must be followed and certain rules and regulations that must be complied with.

Registration

1. Every person who carries on a business of dealing in second-hand goods is identified as a dealer and must be registered in terms of the Act. To access a copy of the registration form, please click on the link below:

   https://www.saps.gov.za/services/flash/shg/saps601.pdf

   Upon completion of the registration process, the respective dealer receives a prescribed certificate of registration which authorises him to carry on business in respect of second-hand goods.

3. This registration as a dealer remains valid for a period of five years from the date the certificate is issued and must be renewed upon expiration.

Record keeping by dealers

1. Once a dealer receives the prescribed certificate, he can start acquiring and selling second-hand goods.

2. All dealers who acquire and sell second-hand goods are required to keep a "register or record book".

3. This register or record book must contain the prescribed particulars / details regarding each and every acquisition or sale of second-hand goods.

4. The dealer is obliged to obtain at least the following prescribed particulars:

   4.1 The identity of the person from whom the second-hand goods were acquired including:
   4.1.1 Full names, contact address and contact numbers;

   4.1.2 The manner in which the person's identity was verified; and

   4.1.3 The person's ID number.

4.2 a description of the goods and the serial number or a distinguishing feature of the;

4.3 The purchase price paid by the dealer;

4.4 The number assigned to the second-hand goods by the dealer; and

4.5 The date and time of the transaction, the date on which the goods were sold or how and when the goods were sold.

5. The person purchasing or selling the second-hand goods to the dealer must furnish the dealer with his full name, physical address and original ID document as proof of identity.

6. The dealer should then keep a copy of the person's ID for verification purposes.

Powers of the Police Official

1. The essence of keeping a register or record book is to allow police officials to monitor the second-hand goods dealers and ensure that they are complying with the Act and not selling stolen goods.

2. The police officials can enter the premises of a registered dealer during business hours, after demanding admission and giving notice to enter, to conduct an investigation on whether that dealer is complying with the Act.

3. The police official may after inspection of the premises require the dealer to produce the following documents:

3.1 The certificate of registration;

3.2 The register or record book relating to the goods;

3.3 Any goods on the premises for him to conduct an examination; or

3.4 To explain any entries or absences in the register.

4. Should the dealer fail to produce any of the above documents or provide the necessary explanations, that police official will consider the dealer to be in contravention of the Act and will therefore:

4.1 demand that the dealer discontinue contravening the Act; and
4.2 afford the dealer a period of 7 (seven) days to rectify the method, failing which the police official can then attend to a search, seizure and seal-off.

5 The police official however, cannot perform a search, seizure and seal-off without first acquiring a warrant enabling him to do so unless:

5.1 The dealer consents to the search, seizure and removal of goods; or
5.2 If the police official on reasonable grounds believes that time is of the essence to act and the delay in obtaining the warrant would defeat the purpose.

Offences and Penalties

1. If the police official, after conducting his investigation, finds that there has been non-compliance by the dealer in that he failed to register as a dealer and/or failed to keep a proper register or record, that dealer can be found guilty by the National Commissioner of an offence.

2. The sanction in respect of being found guilty of an offence is imprisonment of up to 10 (ten) years.

3. In addition to the sanction of imprisonment, a court may:

   3.1 impose a further imprisonment sentence if the non-compliance with the Act was of a very serious nature;

   3.2 suspend or cancel any exemption granted; and

   3.3 order that the second-hand goods be forfeited to the State.

Remedial Action for the Dealer

1. A dealer who has been sanctioned by the Act does have recourse to have that sanction appealed by the Minister.

2. An application for appeal can be made to the Minister by the dealer.

3. The Minister can then after considering the application and circumstances confirm, set aside or amend the decision or make such order that is fair and practical.

Condonation and Extension of Time

1. The National Commissioner may on good cause shown and on grounds which are not in conflict with this Act, extend any period contemplated in this Act to any dealer, allowing that dealer to comply with the provisions of the Act.

WASTE MANAGEMENT:

Since July 2009, South Africa's waste management environment has been regulated in terms of the National Environmental Management: Waste Act 59 of 2008 (NEMWA), mainly to promote a waste management system which ensures an environment not harmful to the health and well-being of the public.

There are various different categories relating to waste management in South Africa however the following are the most pertinent to businesses operating within the motor industry:

WASTE TYRE MANAGEMENT:

Waste tyre management is regulated by the Environment Conservation Act 73 of 1989 (more specifically, the Waste Tyre Regulations, 2009 as published in Government Notice [GN] R149 in Government Gazette [GG] 31901 of 13 February 2009) and the National Environmental Management: Waste Act 59 of 2008 (more specifically, the list of waste management activities that have, or are likely to have, a detrimental effect on the environment as published in GN 921 in GG 37083 of 29 November 2013 and the National Norms and Standards for Storage of Waste as published in GN 926 in GG 37088 of 29 November 2013). More recently the Waste Tyre Regulations 2017.

Waste tyres include all unserviceable tyres whether: new, used, re-treaded, or un-roadworthy tyres, not suitable to be re-treaded, repaired, or sold as part worn tyres and not fit for its original intended use (regulation 1 of the Waste Tyre Regulations).

Restrictions

The following restrictions are imposed by the Waste Tyre Regulations (regulation 3):

The Waste Tyre Regulations prohibit any person to manage waste tyres in a manner which does not comply with these Regulations.

Furthermore, no person may recycle, recover or dispose of a waste tyre, or knowingly or negligently cause or permit a waste tyre to be recycled, recovered or disposed of, at any facility or on any site, unless the recycling, recovery or disposal of that waste tyre is authorised by law. Waste tyres may also not be recovered or disposed of in a manner that is likely to cause pollution of the environment or harm to health and well-being.

The disposal of a waste tyre at a waste disposal facility two years from the date of commencement of the regulations (30 June 2009) is also prohibited.

The Waste Tyre Regulations impose specific duties on specific persons including, amongst others, tyre dealers, waste tyre processors and waste tyre stockpile owners.

Duties of a tyre dealer

A tyre dealer means any person or entity that distributes, or otherwise deals commercially in tyres. A tyre dealer has the following duties in terms of the Waste Tyre Regulations:

A tyre dealer must classify any used tyre in his/her possession or control as either a new tyre, part worn tyre or a re-treadable casing and any tyre not falling into either of these categories must be classified as a waste tyre.

A tyre dealer must also mutilate or cause all waste tyres with a load index of 121 or less in his/her possession or control to be mutilated, which includes, but is not limited to-

-The cutting of the bead of a waste tyre in two places;

-Punching a hole with a minimum diameter of 50mm in the sidewall; or

-Making a cut of at least 100mm in the sidewall.

A tyre dealer must also manage all waste tyres in his/her possession or control in accordance with the approved integrated industry waste tyre management plan.

Duties of waste tyre processor

A waste tyre processor means any person or entity that is engaged in the commercial re-use, recycling or recovery of waste tyres (regulation 1 of the Waste Tyre Regulations). A waste tyre processor has the following duties in terms of the Waste Tyre Regulations:

A waste tyre processor who undertakes an activity involving the reuse, recycling or recovery of a waste tyre must, before undertaking that activity, ensure that the reuse, recycling or recovery of the waste tyre is more sustainable than the disposal of such a waste tyre.

Duties of waste tyre stockpile owners

A waste tyre stockpile means a site on which predominantly waste tyres have been stored continuously for a period greater than 2 years and which covers an area greater than 500m2, and excludes waste disposal facility. A waste tyre stockpile owner means the owner or lawful possessor of the waste tyres.

A waste tyre stockpile owner has the following duties in terms of the Waste Tyre Regulations:

Any person or entity who has a waste tyre stockpile on their premises or is the owner of a waste tyre stockpile(s) on the date of commencement of these regulations (30 June 2009) must register with the Minister within 30 days, providing information specified in the regulation 8(1) of the Regulations. A registration number will then be issued by the Minister, which must be displayed on all trading documentation.

A waste tyre stockpile owner must have within 120 days of the date of commencement of the regulations submitted to the Minister, a waste tyre stockpile abatement plan for approval. A waste tyre stockpile abatement plan means a plan, prepared by a person or entity who has a waste tyre stockpile, indicating the manner and timeframe in which the stockpile will be removed and must contain information specified in regulation 13. Remember that any person producing a waste tyre stockpile abatement plan must take appropriate steps to bring the contents of a proposed waste tyre stockpile abatement plan to the attention of relevant organs of state, interested and affected parties and must call for comments to the plan. Any comments submitted in respect of a waste tyre stockpile

abatement plan must be considered by the person responsible for preparing the plan, and a copy of all comments and responses must be submitted to the Minister, together with the plan. Once approved, compliance with the waste tyre stockpile abatement plan must be ensured and an annual external audit must be conducted thereon, of which the results must be submitted to the Minister.

A waste tyre stockpile owner that is not permitted or licensed in terms of the relevant legislation shall not add to the stockpile after 120 days of the commencement of these regulations.

With regards to the storage of waste tyres on site, compliance must be ensured with regulation 16 of the Waste Tyre Regulations which states that no waste tyre storage area may exceed 30 000m2. A waste tyre storage area for a tyre dealer may not exceed 500m2. In the case where a waste storage area is less than 500m2, the Waste Tyre Regulations will be applicable to such storage area. Any person who stored waste tyres on the date that the Waste Tyre Regulations commenced must comply with regulation 16 of the Waste Tyre Regulations within one year after the date of commencement of these Regulations. Thereafter, any non-compliance is considered an offence, punishable by penalties as specified in the Regulations.

In the case where the waste storage area exceeds 500m2, compliance must be ensured with the National Norms and Standards for Storage of Waste. A person who lawfully operated a waste storage facility for the storage of general and hazardous waste prior to and on the date of coming into operation of the National Norms and Standards for Storage of Waste, may continue with the activity for the duration as stipulated in the permit or licence and after the expiry of the permit or licence comply with these standards. Thereafter, any non-compliance is considered an offence, punishable by penalties as specified in these Norms and Standards.

OILS:

Used oil contains harmful compounds and carcinogens that can easily contaminate the environment, especially if thrown down drains, into landfills or onto the ground where it leaches into the water table.

Because of its harmful properties, used oil is classified as a hazardous waste and is strictly governed by environmental laws - with its storage and disposal needing to meet the requirements of the Waste Act.

In terms of the Act, Generators of used oil are required to make sure that licensed used oil collectors remove this hazardous waste and take it to a licensed processor for responsible recycling.

The responsibility lies with the generator to ensure that the person who collects used oil is licensed, audited and can provide the legally required Safe Disposal Certificate and Hazardous Waste Manifest, and failure to do so can result in fines and prosecution of the generators and collectors.

Since used oil is a hazardous waste, generators are required to maintain the below information on a Hazardous Waste Manifest, a document that will track the used oil from cradle to grave and offer a clear snapshot on how it has been managed:

- A unique consignment identification number.
- The generator's contact details, including the contact person, physical and postal address, phone

and fax number and email address.

- The physical address of the site where the waste was generated.
- An emergency contact number.
- The origin/source of the waste.
- A description of the waste.
- The physical nature / consistency of the waste (liquid, solid, sludge, pump-able, non-pump-able).
- The quantity of waste.
- Packaging (bulk, small containers, and tank).
- Transport type (tanker, truck, and container).
- Special handling instructions.
- The date of collection / dispatch.
- The intended receiver (waste manager).

B-BBEEE:

BBBEE policies are set out in the BBBEE Act (No. 53 of 2003) and reinforced by the Codes of Good Practice. Under this legislation, it is not compulsory for a business to obtain a BBBEE certificate – it is an entirely voluntary process. However, a certificate brings with it a lot of benefits – particularly for Qualifying Small Enterprises (QSEs). A QSE is a company that has an annual turnover of between R10 million and R50 million.

One of the biggest benefits of having a BBBEE certificate is being able to conduct business with government sectors (including municipalities) and public entities. A certificate allows a company to tender – and the higher the level of your certificate, the better your chances of winning. There are eight levels of BBBEE compliance, with Level 1 being the highest and most desirable.

Other advantages of having a BBBEE certificate include having a better chance of securing contracts with large companies and big industry names, because they are encouraged to do business with smaller BBBEE-compliant companies. A certificate allows you to participate as a supplier in the lucrative chain of preferential procurement.

A further benefit of having a BBBEE certificate is the impression it gives. A certificate shows that you care and that your business is committed to making a positive difference in society. Remember that BBBEE policies are focussed on effecting transformation in the business world by empowering greater black economic participation. A BBBEE certificate can be promoted in your business's marketing materials.

BBBEE certificates can be issued by verification agencies that are approved by the South African National Accreditation System or Independent Regulatory Body. Obtaining a certificate may not require special auditing – an affidavit may suffice. For example, a QSE that has 51% black ownership automatically qualifies for Level 2 BBBEE status. If the ownership is 100% black, this grants Level 1 status.

Exempt Micro Enterprises (EMEs), which need to have an annual turnover of less than R10 million, automatically acquire Level 4 status without needing any black ownership. Having black ownership immediately upgrades them to Level 1 status.

BBBEE certificates are valid for one year from the date of issue, and need to be renewed annually.

SAMPRA:

SAMPRA has been accredited by the Department of Trade and Industry's Companies and Intellectual Property Registration Office (CIPRO) as a registered collecting society that represents all members of RiSA – the Recording Industry of South Africa. RiSA is the internationally recognised representative association of all South Africa's leading record companies, and has more than 800 members that collectively comprise more than 95% of the South African music recording industry.

South African businesses have become accustomed to making payment of a licence fee to SAMRO. There is no connection whatsoever between SAMRO and SAMPRA. The SAMRO payment only covers the copyright in the underlying musical work – the composition itself – and is not to be confused with the payment due to SAMPRA for the recorded performance of the underlying musical work. The SAMRO payment is not shared in any way with the owner of the sound recording, who has invested in the making of the sound recording, or the performer whose performance is embodied in the sound recording.

Under the amendments to the Copyright Act and the Performers' Protection Act in 2002, copyright owners of sound recordings and performers will now also derive benefit from the broadcast, diffusion (e.g. music-on-hold on a switchboard), and communication of their sound recordings in any public or commercial environment by a third party user in the course of such user's commercial or business activities, for example, background music played in a retail outlet or restaurant. A payment to SAMRO is a royalty that is intended to go to the composer of a song that is played. A payment to SAMPRA, is a royalty that goes to the artist that performs that song and to the record company that has invested in the recording of that song by that artist.

If you are broadcasting or playing sound recordings in public, a SAMPRA licence is required.

A SAMPRA licence enables music users to play literally millions of sound recordings on their business premises.

Costs:

To view the current fees for SAMPRA please follow this link: https://www.sampra.org.za/tariffs/

SAMRO:

SAMRO's primary role is to administer Performing Rights on behalf of its members. They do so by licensing music users (such as television and radio broadcasters, live music venues, retailers, restaurants, promoters and shopping centres), through the collection of licence fees which are then distributed as royalties.

Fees payable to SAMRO are set out in the Copyright Act and it is part of South African law. If the music you play isn't written, created, performed, published and recorded by you, then it belongs to the Music Creator and you need a licence.

If you play music outside of your home or car and there are other people around to hear it, technically you owe the Southern African Music Rights Organisation (SAMRO) money. And it doesn't matter if the music is recorded or from the radio.

The same holds true if you run a business and want to have the radio on in your office or store. In fact, if you have a television in your company's reception area where the public may hear music, you owe SAMRO a licensing fee, too.

Purchasing a music usage licence from SAMRO gives Music Users permission to play music publically at their businesses or venue. The funds collected from these fees are called "licence fees". They are passed on to the people who made the music as royalty income. So they are rewarded for the hard work and soul that goes into making the tunes that make your business better.

Cost:

SAMRO has 53 tariffs that have been developed to address the differences in music usage in various types of premises. Once a SAMRO relationship consultant arrives to conduct a site inspection, he or she will start to identify which of these tariffs will be applicable for that particular venue's music usage. So, there are several elements that will have to be taken into account when working out a tailor-made tariff. There is no one-size-fits-all solution when it comes to determining a venue's SAMRO music usage licence.

The penalties for non-compliance vary, and SAMRO can backdate infringements for up to three years.

How to register for a licence:

Please follow this link: https://www.samro.org.za/music-user