SALDANHA BAAI BAY
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Keeping your business legal

Respecting tax laws, labour laws, local bylaws, and many other regulations is one of the most time-consuming parts of managing a business. However, you will not be able to tender for government (and other) contracts if your company is not compliant. In addition, noncompliance may result in fines and possibly jail time.

Any of these problems could mean the end of your business - so it is vital to keep your business legal. The onus is on you - the business owner - to get to know the regulations that apply to your business, so you can do business legally.

It's not all bad news, though; maintaining compliance can help your company by enhancing your standing in the industry you work in. This guide introduces you to these regulatory areas and explains how to keep your business legal from the beginning:

1. Registering your business
2. Registering a trademark or patent (‘intellectual property')
3. Registering for tax
4. Labour regulations
5. Industry regulations
6. Municipal regulations
7. Consumer rights
8. Other regulations

REGISTERING YOUR BUSINESS

The legal issues you will have to adhere to will depend on the form of business you opt for. Currently you can choose these forms of business:

1. Sole proprietorship
2. Partnership
3. Company
4. Trading trust
5. Co-operative.

The first two forms don't require you to register with any particular body.

On May 1, 2011, the Companies Act of 2008 went into force, ending Close Corporations' ability to register. All you must do now is register a company.

To keep using your company's registered name if you register as a private company, you must submit an annual return to the Companies and Intellectual Property Commission (CIPC). The sums are not particularly high. You risk having your name removed from the CIPC database and having to go through the hassle of reregistering if you neglect to renew the return by the deadline. For additional details on annual returns, go to the CIPC website at www.cipc.co.za.

REGISTERING A TRADEMARK OR PATENT

If you have come up with an invention or discovery you can protect it from others stealing it by patenting it with the Patents Office at the CIPC in terms of the SA Patents Act. It is also wise to consult a Patents Attorney who will assist in ensuring the widest possible protection for your idea or invention.

Similarly, you can protect your brand with a trademark. The protection covers the specific shape, wording and logo of your brand. You can also use copyright to protect written or recorded works. Look for these easy-to-read guides on the CIPC website:

- Patents - www.cipc.co.za/index.php/trade-marks-patents-designs-copyright/patents/
- Trademarks - www.cipc.co.za/index.php/trade-marks-patents-designs-copyright/trademarks/
- Copyright - www.cipc.co.za/index.php/trade-marks-patents-designs-copyright/copyright/

TAX REGISTRATION

After completing the procedures necessary to set up your company, you must register for taxes. The South African Revenue Service (Sars) is an effective tax collection agency that can swiftly catch you off guard if you neglect to file the required paperwork.

APPLYING FOR PROVISIONAL TAX RESEARCH

You must register as a provisional taxpayer with Sars if you operate as a partnership or sole proprietor. For more details, visit the Sars website at www.sars.gov.za. go to the menu item Tax Types, and then click on Provisional Tax. When a company registers with the CIPC, they are automatically registered with Sars as taxpayers. The tax collector ought to mail you the required forms.

PAY AS YOU EARN (PAYE) TAX

If you employ staff, you are required to deduct tax from salaries or wages. You must register for Pay As You Earn (PAYE) if you pay wages and salaries to any employees with an annual income that falls above the tax threshold. The necessary form is available from your nearest Sars office or from their website www.sars.gov.za. Using the same form, you as an employer can also register your employees for the Unemployment Insurance Fund and Skills Development Levy. See the section on Labour regulations for more on these regulations.

For more see Sars' webpage on PAYE: www.sars.gov.za/TaxTypes/PAYE/Pages/default.aspx.

VAT (VALUE-ADDED TAX) AND ADDITIONAL TAXES

Additionally, businesses need to register for additional taxes. If your annual revenue exceeds R1 million As a seller of value-added tax, you must register. Even if your yearly revenue is less than this amount, you can still (optionally) register for VAT. The fact that entities that pay VAT are frequently seen as more credible than those that don't is one of the reasons this is done. Furthermore, you are entitled to a refund of the VAT you paid your suppliers if they charge you VAT.

A useful overview of VAT can be found in the Sars publication Tax Guide for Small Business Owners (www.sars.gov.za/ClientSegments/Businesses/SmallBusinesses/Pages/default.aspx), which also explains the tax periods and how to register. Sars also offers guides to assist you in comprehending the different

- Value-added Tax (see www.sars.gov.za/TaxTypes/VAT/Pages/default.aspx)
- Skills Development Levy (www.sars.gov.za/TaxTypes/SDL/Pages/default.aspx)
- Unemployment Insurance Fund (http://www.sars.gov.za/TaxTypes/UIF/Pages/default.aspx)

Labour regulations

People, more especially one's own employees, are among the most challenging issues a business owner faces on a daily basis. Although South Africa's labour laws have received a lot of criticism for being overly firm, some of the regulations' main goals are to address the terrible legacy of employee relations with employers.

The best course of action for employers is to become familiar with the various labour laws; doing so will spare them the trouble, expense, and time of having to appear before the Commission for Conciliation, Mediation, and Arbitration (CCMA). The Occupational Health and Safety Act, the Labour Relations Act, and the Basic Conditions of Employment Act are the three main pieces of legislation that employers should become well versed in.

Basic Conditions of Employment Act

The requirements for hiring anyone are outlined in the Basic Conditions of Employment Act. Employers are prohibited from granting conditions that are less favourable than those outlined in this legislation, which pertains to all workers apart from senior managers, independent contractors, unpaid volunteers, and those making more than R115 572 annually. The Act regulates several issues, including working hours, overtime, sick leave, maternity leave, yearly leave, leave for family responsibilities, and termination of employment.

You have to put certain information in writing when hiring a new employee. These details include:

- a job description
- the date of employment
- the wage or rate of remuneration

It is imperative that you maintain documentation of your workers' employment, including the duration of their employment and the amount of pay they receive on a weekly or monthly basis.

When your company signs a contract with a labour broker—a person or organization that hires employees and pays them on your behalf—the broker is considered the employer. Despite this, maintaining compliance with the Act is the joint duty of the employer and the broker. The Act also includes provisions regarding working hours and overtime for companies with ten or fewer employees.

The Department of Labour's website has various guides that explain the Basic Conditions of Employment Act and how to comply. Go to www.labour.gov.za and look under the headings ‘Legislation' or ‘Basic Guides'.

Labour Relations Act

This Act safeguards workers' rights and specifies what must happen before an employer can fire an employee legally. The Act also regulates things like the right to strike, unfair discrimination during the hiring process, trade union access to information, and unethical behaviour in the workplace.

Employers must understand the workings of the dispute and dismissal processes to adhere to the proper protocols. When an employer appears before the Commission for Conciliation, Mediation, and Arbitration (CCMA), unfair procedures are frequently the primary cause of the commission's decision in favour of the employee. (The act established the CCMA as a body for resolving disputes. To learn more, go to www.ccma.org.za.)

Department of Labour's website also has the full Act and its amendments, as well as a number of useful guides on how you should comply.

Occupational Health and Safety Act

Although it is legally required of all employers to offer a risk-free and secure work environment to their staff, many do not.

The Occupational Health and Safety Acts lay out the general requirements and regulations for a clean and safe workplace, which include:

- Having a first-aid box filled with supplies and a trained staff member in the first-aid course.
- Appropriate fire exits and firefighting equipment.
- Knowing when to hire a health and safety representative.
- Each industry sector also has its own set of regulations governing health and safety.

It is your responsibility as the business owner to notify a labour inspector of any incidents that result in illness, injury, or death at work. A labour inspector may issue a prohibition, contravention, or improvement order—which could prevent you from trading—if you disobey health and safety regulations.

If you are not sure about whether your business complies with the Act or not, you can contact an Approved Inspection Authority (AIA) to do a risk assessment of your premises. Again, the Department of Labour's website (www.labour.gov.za) has guides on how to comply with this Act, as well as the full Act itself.

Compensation for Occupational injuries and diseases Act

You must register for the Compensation for Occupational Injuries and Diseases fund with the Compensation Commissioner if you have employees. Workers who get sick or hurt while at work are eligible to receive benefits from this fund. Employers are required by the Act to notify the Commissioner of any workplace accident within seven days. The Department of Labour has the forms you will need for registration.

The Department of Labour's website has a useful guide to the Act (look under Basic Guides on the site); if you want to read the Act, you can download it from the internet http://www.gov.za/sites/ www.gov.za/files/a61-97.pdf).

Bargaining Councils

If your company operates in an industry that is governed by a bargaining council, you must register it with the appropriate council, pay monthly levies, and deductions made by employees for things like sick days, holidays, and contributions to provident funds. Check out the Department of Labour's 'Basic Guide to Bargaining Councils' on their website to find out if you could be impacted by one (locally or in your industry). Equal representation from the trade unions and employee associations within the relevant industry makes up a bargaining council. Parties negotiate agreements in the bargaining council. Based on the council's representation of workers in the sector, the Minister of Labour will determine whether or not to extend the agreement to non-party members after a new agreement is drafted.

Companies that violate their bargaining council's rules or fail to register run the risk of fines and penalties. Councils have the authority to shut down businesses that do not comply. Companies may request an exemption from some of the terms of an agreement made by a bargaining council.

A useful source of more information is the Department of Labour's guide to bargaining council's. Also have a look at the department's guide to unfair dismissals and unfair labour practices.

Unemployment Insurance

A person must be registered with the Department of Labour's Unemployment Insurance Fund (UIF) if they are employed for more than 24 hours per month. Employees who lose their jobs due to illness or termination of employment are compensated by the fund. It equates to a 2% contribution of an employee's pay, of which the employee contributes half. The South African Revenue Services is the recipient of the deductions.

For more details on UIF, see the Department of Labour's guide to UIF

Skills Development Levies

A skills development levy of 1% of your payroll, or the total amount you pay in salaries and wages, must be paid to the South African Revenue Services (Sars) by law if your company pays out more than R500 000 in payroll each year. This comes from the company itself rather than a deduction from the pay of your employees.

If you can demonstrate that you trained your staff, you may be able to recoup a portion of your levy. Speak with the Sectoral Education Training Authority (SETA) that oversees your industry for more details on recovering your training costs and levy. Visit www.labour.gov.za/contacts/SETA/seta-seta-offices for a list of SETAs.

Employment Equity

Discrimination against people based on their race, gender, and disability has a long history in South Africa. The purpose of the Employment Equity Act is to right these wrongs by requiring employers to change their workplaces by hiring formerly underrepresented individuals.

This Act does not apply to small businesses with a few employees. It mandates that companies with more than 150 workers produce an annual employment equity report outlining their efforts to create more equal workplaces for people of colour, women, and people with disabilities. Every two years, companies with fewer than 150 employees are required to submit an employment equity report, as are some with fewer than 50 employees (those with high employee turnover).

Industry regulations

In addition to the general regulations mentioned above, each industry sector has its own set of regulations. Find out about these regulations by speaking with the employers' or relevant industry association. For example, you must register as a credit provider under the National Credit Act if you offer financing or microloans. You must apply for a liquor license if you intend to sell alcohol. Certain industries and professions follow best practices or codes of ethics, which can help to establish your company's reputation as a reliable and respectable enterprise.

Municipal Regulations

Speak with your municipality when launching a new business to find out if there are any rules you should be aware of. If you intend to establish a new structure for your company's center of operations. For instance, you might have to get zoning approval and undergo inspections by the municipality's fire and health officials.

CONSUMER RIGHTS

Since the Consumer Protection Act went into effect in 2009, businesses have been required to consider the rights of their customers. The law regulates a company's interactions with its clients and forbids specific marketing techniques. It will primarily impact retailers and companies in the manufacturers, distributors, and services industry.

A National Consumer Commission was established by the Act to look into consumer complaints. The commission may then intervene on behalf of the customer and impose penalties on companies that behave unfairly. The Commission may apply to the National Consumer Tribunal to impose a fine on a business that disregards a compliance notice that it has issued.

Among the most significant effects on businesses are:

- Strict liability, which requires the manufacturer, retailer, distributor, or importer to demonstrate that the products or services they provide to clients were in good condition. Prior to this law, it was the consumer's responsibility to demonstrate any wrongdoing.
- Producers are now required to make sure that warning labels are attached to their products and that a product's ingredients list includes any genetically modified ingredients.
- Businesses such as plumbers or handymen who repair, supply or replace parts must now give customers a quote in writing (or in another recorded manner) before proceeding with any work.
- Provision for an opt-out clause in fixed-term contracts and mandatory refunds for goods that are returned to the seller by the buyer within a 10-day period following delivery.
- The Act establishes guidelines for franchisors and franchisees' interactions, including a 10-day "cooling off" period following the signing of a franchise agreement that allows a franchisee to cancel the contract.
- The Act also outlaws certain marketing practices such as referral marketing, where one person supplies consumer goods or services in return for receiving a rebate.

Other marketing practices the Act outlaws are:

- Pyramid schemes
- Negative option advertising (where a consumer is made to pay for goods, such as a book posted to them, unless they specifically declined the request)
- Bait marketing (where a business owner promises a certain number of items are for sale at a certain price, but when the customer enters the store they find these items to now all be "sold" or the price no longer to be marked down)
- Fake competitions (a business owner can't market a product by saying a customer has won a competition when in fact no competition has been conducted or the prize of the competition is related to a previously undisclosed condition).
- The Act also specifies certain rules that direct marketers must abide by, including a cooling-off period for customers from any direct-marketing sales.
- You can download the final draft of the Bill from this internet site: www.pmg.org.za/files/ bills/080925b19d-08.pdf.

Other regulations