

## **POLICY STATEMENT AND MANUAL OF:**

### **PROTECTION OF PERSONAL INFORMATION AND THE**

### **RETENTION OF DOCUMENTS**

### **FOR**

**Southern Oil (Pty) Ltd**

**(hereinafter referred to as “SOILL”)**

**(Registration number: 1995/006698/07)**

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## A. SOILL POLICY ON THE RETENTION & CONFIDENTIALITY OF DOCUMENTS, INFORMATION AND ELECTRONIC TRANSACTIONS

### 1. PURPOSE

- 1.1 To exercise effective control over the retention of documents and electronic transactions:
  - 1.1.1 as prescribed by legislation; and
  - 1.1.2 as dictated by business practice.
- 1.2 Documents need to be retained in order to prove the existence of facts and to exercise rights the Company may have. Documents are also necessary for defending legal action, for establishing what was said or done in relation to business of the Company and to minimize the Company's reputational risks.
- 1.3 To ensure that the Company's interests are protected and that the Company's and business partners' rights to privacy and confidentiality are not breached.
- 1.4 Queries may be referred to the SOILL Information Officer or Delegated Officials (Refer to Section B 6 below for contact details).

### 2. SCOPE AND DEFINITIONS

- 2.1 All documents and electronic transactions generated within and/or received by the Company.
- 2.2 Definitions:
  - 2.2.1 **Business partners** includes, but are not limited to, shareholders, debtors, creditors as well as the affected personnel and/or departments related to a service division of the Company.
  - 2.2.2 **Confidential Information** refers to all information or data disclosed to or obtained by the Company by any means whatsoever and shall include, but not be limited to:
    - 2.2.2.1 financial information and records; and
    - 2.2.2.2 all other information including information relating to the structure, operations, processes, intentions, product information, know-how, trade secrets, market opportunities, customers and business affairs but excluding the exceptions listed in clause 4.1 hereunder.
  - 2.2.3 **Constitution:** Constitution of the Republic of South Africa Act, 108 of 1996.
  - 2.2.4 **Data** refers to electronic representations of information in any form.
  - 2.2.5 **Documents** include books, records, security or accounts and any information that has been stored or recorded electronically, photographically, magnetically, mechanically,

electro-mechanically or optically, or in any other form.

2.2.6 **ECTA:** Electronic Communications and Transactions Act, 25 of 2002.

2.2.7 **Electronic communication** refers to a communication by means of data messages.

2.2.8 **Electronic signature** refers to data attached to, incorporated in, or logically associated with other data and which is intended by the user to serve as a signature.

2.2.9 **Electronic transactions** include e-mails sent and received.

2.2.10 **PAIA:** Promotion of Access to Information Act, 2 of 2000.

### 3. ACCESS TO DOCUMENTS

3.1 All Company and business partner information must be dealt with in the strictest confidence and may only be disclosed, without fear of redress, in the following circumstances (also see clause 4.2 below):

3.1.1 where disclosure is under compulsion of law;

3.1.2 where there is a duty to the public to disclose;

3.1.3 where the interests of the Company require disclosure; and

3.1.4 where disclosure is made with the express or implied consent of the business partner.

3.2 Disclosure to 3rd parties:

All employees have a duty of confidentiality in relation to the Company and business partners. In addition to the provisions of clause 3.1 above, the following are also applicable:

3.2.1 Information on business partners: Our business partners' right to confidentiality is protected in the Constitution and in terms of ECTA. Information may be given to a 3<sup>rd</sup> party if the business partner has consented in writing to that person receiving the information.

3.2.2 Requests for Company information:

3.2.2.1 These are dealt with in terms of PAIA, which gives effect to the constitutional right of access to information held by the State or any person (natural and juristic) that is required for the exercise or protection of rights. Private bodies, like the Company, must however refuse access to records if

disclosure would constitute an action for breach of the duty of secrecy owed to a third party.

3.2.2.2 In terms hereof, requests must be made in writing on the prescribed form to the SOILL Information Officer, Company Secretary or the Deputy Information Officers (Refer to Section B 6 below for contact details). The requesting party has to state the reason for wanting the information and has to pay a prescribed fee.

3.2.2.3 SOILL have a PAIA policy in place. [Refer to the **SOILL PAIA policy** and **Annexure 1 – PAIA Request for access to records form** and **Annexure 2 – PAIA fees for request of records form** included in the SOILL PAIA policy]. The Company's manual in terms of PAIA, which contains the prescribed forms and details of prescribed fees, is available on request from the Company Secretary and the SOILL website <http://www.soill.co.za>.

3.2.3 Confidential Company and/or business information may not be disclosed to third parties as this could constitute industrial espionage. The affairs of the Company must be kept strictly confidential at all times.

3.3 The Company views any contravention of this policy very seriously and employees who are guilty of contravening the policy will be subject to disciplinary procedures, which may lead to the dismissal of any guilty party.

## 4. STORAGE OF DOCUMENTS

### 4.1 HARD COPIES

Hardcopies of documents are stored in archives at dedicated locations. All hardcopies of documents are retained in line with the guidelines as set out by the SAICA guide on the retention of records document. (Refer to **Annexure 1 – SAICA Retention of Records guide** below for a detailed list of all retention period guidelines for specific types of documents and applicable Acts that these documents apply to).

### 4.2 ELECTRONIC STORAGE

4.2.1 The internal procedure requires that electronic storage of information: important documents and information must be referred to and discussed with IT who will arrange for the indexing, storage and retrieval thereof. This will be done in conjunction with the departments concerned.

4.2.2 Scanned documents: If documents are scanned, the hard copy must be retained for as long as the information is used or for 1 year after the date of scanning, with the exception

of documents pertaining to personnel.

Any document containing information on the written particulars of an employee, including: employee's name and occupation, time worked by each employee, remuneration and date of birth of an employee under the age of 18 years; must be retained for a period of at least 3 years after termination of employment.

4.2.3 Section 51 of the Electronic Communications Act No 25 of 2005 requires that personal information, and the purpose for which the data was collected, must be kept by the person who electronically requests, collects, collates, processes or stores the information. A record of any third party to whom the information was disclosed must be retained for a period of 1 year or for as long as the information is used.

It is also required that all personal information which has become obsolete must be destroyed.

## **5 DESTRUCTION OF DOCUMENTS**

- 5.1 The SOILL Information Officer or Delegated Officials will on a yearly (Preferably in May / June) basis request all Department Heads to identify documents / information that has reached their retention period. Documents may be destroyed after the termination of the retention period specified in Annexure "A" hereto. The SOILL Information Officer or Delegated Officials will request departments to attend to the destruction of their documents and these requests shall be attended to as soon as possible.
- 5.2 Each department is responsible for attending to the destruction of its documents. Files must be checked in order to make sure that they may be destroyed and also to ascertain if there are important original documents in the file. Original documents must be returned to the holder thereof, failing which, they should be retained by the Company pending such return.
- 5.3 After completion of the process in 5.2 above, the Department Head shall, in writing, authorise the removal and destruction of the documents. These authorisation requests will be forwarded to the Information Officer for filing / record keeping.
- 5.4 The documents are then made available for collection by the removers of the Company's documents, who also ensure that the documents are shredded before disposal. This also helps to ensure confidentiality of information. Documents may also be stored off-site, in storage facilities approved by the Company.

## **B. SOILL POPI POLICY IN TERMS OF THE PROTECTION OF PERSONAL INFORMATION ACT 4 OF 2013**

### **1. INTRODUCTION**

SOILL is a group of companies functioning within the agricultural, retail and manufacturing of edible oils and related products environment that is obligated to comply with The Protection of Personal Information Act 4 of 2013.

POPIA requires SOILL to inform their business partners (Including employees) as to the manner in which their personal information is used, disclosed and destroyed.

SOILL guarantees its commitment to protecting its business partner's privacy and ensuring that their personal information is used appropriately, transparently, securely and in accordance with applicable laws.

The Policy sets out the manner in which SOILL deals with their business partner's personal information as well as and stipulates the purpose for which said information is used. The Policy is made available on SOILL's website [www.soill.co.za](http://www.soill.co.za) and on request from SOILL head office.

The Policy is drafted in conjunction with the Financial Intermediary Association's ("FIA") Protection of Personal Information Notice.

## **2. PERSONAL INFORMATION COLLECTED**

Section 9 of POPI states that *"Personal Information may only be processed if, given the purpose for which it is processed, it is adequate, relevant and not excessive."*

SOILL collects and processes business partner's personal information pertaining to the business partner's financial needs. The type of information will depend on the need for which it is collected and will be processed for that purpose only. Whenever possible, SOILL will inform the business partner as to the information required and the information deemed optional. Examples of personal information we collect include, but is not limited to:

- The Business Partner's ID, Company Registration number, name, surname, address, postal code, marital status, and number of dependents;
- Description of the business partner's residence, business, assets; financial information, banking details, etc.; and
- Any other information required by SOILL and suppliers in order to provide business partners with an accurate analysis of their business needs.

SOILL may also collect and process business partner's personal information for marketing purposes in order to ensure that our products and services remain relevant to our business partners and potential business partners.

SOILL aims to have agreements in place with all product suppliers, insurers and third-party service providers to ensure a mutual understanding with regard to the protection of the business

partner's personal information. SOILL suppliers will be subject to the same regulations as applicable to SOILL.

With the business partner's consent, SOILL may also supplement the information provided with information SOILL receives from other providers in order to offer a more consistent and personalized experience in the business partner's interaction with SOILL. For purposes of this Policy, business partners include potential and existing business partners.

### **3. THE USAGE OF PERSONAL INFORMATION**

The Business Partner's Personal Information will only be used for the purpose for which it was collected and as agreed.

This may include:

- Providing products or services to business partners and to carry out the transactions requested;
- Assessing and processing claims;
- Conducting credit reference searches or- verification;
- Confirming, verifying, and updating business partner details;
- For purposes of claims history;
- For the detection and prevention of fraud, crime, money laundering or other malpractices;
- Conducting market or customer satisfaction research;
- For audit and record keeping purposes;
- In connection with legal proceedings;
- Providing SOILL services to business partners, to render the services requested and to maintain and constantly improve the relationship;
- Providing communication in respect of SOILL and regulatory matters that may affect business partners; and
- In connection with and to comply with legal and regulatory requirements or when it is otherwise allowed by law.

According to section 10 of POPI, personal information may only be processed if certain conditions, listed below, are met along with supporting information for SOILL processing of Personal Information:

- The business partner's consents to the processing: - consent is obtained from business partners during the introductory, appointment and needs analysis stage of the relationship;
- The necessity of processing: in order to conduct an accurate analysis of the business partner's needs for purposes of amongst other credit limits, insurance requirements, etcetera;
- Processing complies with an obligation imposed by law on SOILL;



- The Financial Advisory and Intermediary Services Act ('FAIS') requires Financial Service Provider's ('FSPs') to conduct a needs analysis and obtain information from business partners about their needs in order to provide them with applicable and beneficial products;
- Processing protects a legitimate interest of the business partner — it is in the business partner's best interest to have a full and proper needs analysis performed in order to provide them with an applicable and beneficial product or service; and
- Processing is necessary for pursuing the legitimate interests of SOILL or of a third party to whom information are supplied. In order to provide SOILL business partners with products and or services both SOILL and any of our product suppliers require certain personal information from the business partners in order to make an expert decision on the unique and specific product and or service required.

#### 4. DISCLOSURE OF PERSONAL INFORMATION

SOILL may disclose a business partner's personal information to any of SOILL companies or subsidiaries, joint venture companies and or approved product- or third-party service providers whose services or products business partners elect to use. SOILL has agreements in place to ensure compliance with confidentiality and privacy conditions.

SOILL may also share business partner personal information with and obtain information about business partners from third parties for the reasons already discussed above.

SOILL may also disclose a business partner's information where it has a duty or a right to disclose in terms of applicable legislation, the law, or where it may be deemed necessary in order to protect SOILL rights.

#### 5. SAFEGUARDING BUSINESS PARTNER INFORMATION

It is a requirement of POPI to adequately protect personal information. SOILL will continuously review its security controls and processes to ensure that personal information is secure.

The following procedures are in place in order to protect personal information:

5.1 **SOILL INFORMATION OFFICER** is Kellerman Becker whose details are available below and who is responsible for the compliance with the conditions of the lawful processing of personal information and other provisions of POPI. He is assisted by Christo Esterhuyse, Diana Venter, and Hein van Rooyen who functions as the Delegated Officials to the Information Officer.

5.2 A **POPIA PROJECT TEAM** has been established to oversee the implementation, rollout and day-to-day adherence to the policy and POPI Act.

5.3 **THIS POLICY** has been put in place throughout SOILL and initial training on this policy and the

POPI Act will take place and will be conducted. Ongoing training sessions and awareness notifications on the policy and POPI Act will be provided;

- 5.4 Each new employee will be required to sign an **EMPLOYMENT CONTRACT** containing relevant consent clauses for the use and storage of employee information, or any other action so required, in terms of POPI;
- 5.5 Every employee currently employed within SOILL will be required to sign an addendum to their **EMPLOYMENT CONTRACTS** containing relevant consent clauses for the use and storage of employee information, or any other action so required, in terms of POPI;
- 5.6 SOILL archived business partner information is stored on site which is also governed by POPI, access is limited to these areas to authorized personal.
- 5.7 SOILL product suppliers, insurers and other third-party service providers will be required to acknowledge / confirm an **AGREEMENT** guaranteeing their commitment to the Protection of Personal Information; this is however an ongoing process that will be evaluated as needed.
- 5.8 All electronic files or data are **BACKED UP** by the IT and Information functions which is also responsible for system security that protects third party access and physical threats. The Group IT Division is responsible for Electronic Information Security;

**CONSENT** to process client information is obtained from clients (or a person who has been given authorization from the client to provide the client's personal information) during the introductory, appointment and needs analysis stage of the relationship.

## **6. ACCESS AND CORRECTION OF PERSONAL INFORMATION**

Business partners have the right to access the personal information SOILL holds about them. Business partners also have the right to ask SOILL to update, correct or delete their personal information on reasonable grounds.

Once a business partner objects to the processing of their personal information, SOILL may no longer process said personal information. SOILL will take all reasonable steps to confirm its business partners' identity before providing details of their personal information or making changes to their personal information.

The details of SOILL's Information Officer, Deputy Information Officer, Company Secretary and Head Office are as follows:

**SOILL Information Officer:**

**Name:** Kellerman Becker  
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**SOILL Deputy Information Officer:**

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# **GUIDE ON THE RETENTION OF RECORDS**

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## PREFACE

This guide has been issued by The South African Institute of Chartered Accountants' (SAICA's) Legal Compliance Committee (LCC).

The guide seeks to inform members of the requirement to retain documents for a certain time period.

Every effort has been made to ensure that where quotes, extracts and paragraphs from legislation are referred to these references are correct. The information contained in the guide is for information purposes only.

*Every effort has been made to ensure that the advice given in this guide is correct. Nevertheless, that advice is given purely as guidance to members of SAICA to assist them with particular problems relating to the subject matter of the guide, and SAICA will have no responsibility to any person for any claim of any nature whatsoever that may arise out of, or relate to, the contents of this guide.*

## RETENTION OF RECORDS

Owing to various legislative requirements, documents must be retained for a certain number of years, depending on the legislation.

This guide refers to the legislation and identifies the timeframe in which certain documents have to be kept.

The guide does not attempt to include all legislation, but only refers to the general legislation that impact on a wide variety of entities.

The guide has been compiled to assist SAICA members to meet the legislative requirements when they deal with clients.

The guide is structured to refer to the relevant Act and then to the documents that should be kept and to the period of retention.

### Multiple legislative requirements

Where different legislation refers to the retention of the same records/information, business must consider adhering to the most **stringent of the legislative requirements**. For example, the Value Added Tax (VAT) Act, 89 of 1991 states that invoices should be kept for five years from the submission of the return. However, if the entity is a company, the Companies Act, 71 of 2008 would require the financial records to be kept for a minimum of seven years and therefore the company should adhere to the most stringent requirement of seven years. Other entities would need to refer to the VAT Act as well as any legislation that governs the entity. Where legislation refers to different records (e.g. employment records versus accounting records), then each requirement is specific to that legislation and should be applied accordingly to the specific records.

It is important to note that the Companies Act has a general requirement, in respect of *any* information that a company is required to keep (whether in terms of the Companies Act or any other legislation), to retain such information for a period of at least seven years (or the longer period specified in the applicable legislation). Therefore, companies should ensure that company records and information are retained for no less than seven years.

### Retention of records for an “indefinite” period

In certain instances, legislation requires that records be kept for an “indefinite” period. The term “indefinite” is not defined in the legislation, but clearly requires that documents be retained for as long as the relevant entity exists. We note, however, that once an entity ceases to exist, the obligation on that entity to retain documents “indefinitely” also ceases to exist. In the case of a company, for example, the obligation to retain documents in terms of the Companies Act, 71 of 2008, only applies to an entity that remains registered as a company.

After an entity ceases to exist, other legislation may require records to be retained, but typically only for a period of time and no longer “indefinitely”. In the case of liquidation or sequestration in terms of the Insolvency Act, 24 of 1936, specific requirements apply to the retention of documents, discussed under Section 10 “Insolvency and Liquidation” below. As a company that has been deregistered can be re-registered, or litigation may follow in respect of the deregistered company, we propose that the records of a deregistered company be retained for a reasonable period after deregistration (we propose not less than three years).

## 1 AUDITORS

### Auditing Profession Act, 26 of 2005

The **Auditing Profession Act, 26 of 2005**, implicitly requires that documents should be retained for three years. Section 47 requires the regulatory board, or any person authorised by it, to inspect or review the practice of a registered auditor that audits a public company at least every three years.

Section 5 of the IRBA Manual of Information 2014/15 states the following under the heading “Act”: “Inspections are performed in terms of Section 47 of the Auditing Profession Act, 2005. Functions of the IRBA include promoting the integrity of the auditing profession through conducting inspections. Audit firms performing mandatory audits of financial statements of entities, as defined by the Companies Act, are subject to firm inspections at least once in a three-year cycle.”

The International Standard on Quality Control (ISQC 1) paragraph A61 specifically requires the retention period for audit engagements to be no shorter than five years from the date of the auditor’s report, or, if later, the date of the group auditor’s report.

	Document	Retention period
	<b>Reference: ISQC 1, para A61</b>	
1.1	Engagement documentation, including working papers, statements, correspondence, books, or other documents in the possession or under the control of a registered auditor	Ordinarily no shorter than five years from the date of the auditor’s report, or, if later, the date of the group auditor’s report

## 2 CLOSE CORPORATIONS

### Close Corporations Act, 69 of 1984

The **Close Corporations Act, 69 of 1984**, has the goal of providing for the management, control, and liquidation of close corporations. The Administrative Regulations identify the various periods that documents relating to the Close Corporation must be retained.

	Document	Retention period
	<b>Schedule 3 amended by Government Notice R1664 of 1982</b>	
2.1	Accounting records, including supporting schedules to accounting records and ancillary accounting records	15 years
2.2	Amended Founding statement (forms CK 2 and CK 2A)	Indefinite
2.3	Annual financial statements, including annual accounts and the report of the accounting officer	15 years
2.4	Founding statement (Form CK 1)	Indefinite
2.5	Microfilm image of any original record reproduced directly by the camera – the “camera master”	Indefinite
2.6	Minutes books as well as resolution passed at meetings	Indefinite

### 3 COMPANIES

#### Companies Act, 71 of 2008

The **Companies Act, 71 of 2008**, consolidates and amends the law that relates to companies. This Act became effective on 1 May 2011 and should be read with the Companies Amendment Act, 3 of 2011, and the Companies Regulations, 2011.

The Act expressly provides that records must be kept “in written form, or other form or manner that allows that information to be converted into written form within a reasonable time”.

	Document	Retention period
	<b>Reference: Section 24</b>	
3.1	General rule for company records: Any documents, accounts, books, writing, records, or other information that a company is required to keep in terms of the Act and other public regulation	7 years or longer (as specified in other public regulation)
3.2	Notice of Incorporation (Registration certificate)	Indefinite
3.3	Memorandum of Incorporation and alterations or amendments	Indefinite
3.4	Rules	Indefinite
3.5	Register of company secretary and auditors	Indefinite
3.6	Regulated companies (companies to which chapter 5, part B, C and Takeover Regulations apply) - Register of disclosures of person who holds beneficial interest equal to or in excess of 5% of the securities of that class issued	Indefinite
3.7	Notice and minutes of all shareholders meeting including: <ul style="list-style-type: none"><li>- Resolutions adopted</li><li>- Document made available to holders of securities</li></ul>	7 years
3.8	Copies of reports presented at the annual general meeting of the company	7 years
3.9	Copies of annual financial statements required by the Act	7 years
3.10	Copies of accounting records as required by the Act	7 years
3.11	Record of directors and past directors, after the director has retired from the company	7 years
3.12	Written communication to holders of securities	7 years
3.13	Minutes and resolutions of directors’ meetings, audit committee and directors’ committees	7 years
	<b>Reference: Section 50</b>	
3.14	Securities register and uncertificated securities register	Indefinite

### 4 CONSUMER PROTECTION

#### Consumer Protection Act, 68 of 2008

The **Consumer Protection Act, 68 of 2008**, seeks to promote a fair, accessible, and sustainable marketplace, to provide for improved standards of consumer information and to prohibit certain unfair marketing and business practices. The Act became effective on 31 March 2011 and should be read with the Consumer Protection Act Regulations. There are specific requirements for information to be kept by intermediaries, for auctions and promotional competitions.

	Document	Retention period
	<b>Reference: Section 27(3)(b) and Regulation 10 Disclosure by intermediary</b>	
4.1	Information provided to a consumer by an intermediary - <ul style="list-style-type: none"> <li>- Full names, physical address, postal address, and contact details;</li> <li>- Id number and registration number;</li> <li>- Contact details of public officer in case of a juristic person;</li> <li>- Service rendered;</li> <li>- Intermediary fee;</li> <li>- Cost to be recovered from the consumer;</li> <li>- Frequency of accounting to the consumer;</li> <li>- Amounts, sums, values, charges, fees, or remuneration specified in monetary terms</li> </ul>	3 years
4.2	Disclosure in writing of a conflict of interest by the intermediary in relevance to goods or service to be provided	3 years
4.3	Record of advice furnished to the consumer reflecting the basis on which the advice was given	3 years
4.4	Written instruction sent by intermediary to the consumer	3 years
	<b>Reference: Section 36(11)(b) and Regulation 11(6) Promotional competitions</b>	
4.5	A person who conducts a promotional competition must retain: <ul style="list-style-type: none"> <li>- full details, including identity or registration numbers, addresses and contact numbers of the promoter;</li> <li>- rules of promotional competition;</li> <li>- copy of offer to participate in promotional competition;</li> <li>- names and identity numbers of persons responsible for conducting the promotional competition;</li> <li>- full list of prizes offered in promotional competition;</li> <li>- a representative selection of materials marketing the promotional competition;</li> <li>- list of all instances when the promotional competition was marketed, including dates, medium used and places where marketing took place;</li> <li>- names and identity numbers of persons responsible for conducting the selection of prize winners in the promotional competition;</li> <li>- acknowledgement of receipt, identity number and the date of receipt of the prize by the prize winner;</li> <li>- declarations or affirmation that prize winners are not employees, directors, agents, or consultants who directly or indirectly controls or is controlled by the promoter or marketing service provider in respect of the promotional competition, or the spouses, life partners, business partners or immediate family members;</li> <li>- basis of determining the prize winners;</li> <li>- summary describing the proceedings to determine the winners;</li> <li>- whether an independent person oversaw the determination of the prize winners;</li> <li>- the means by which the prize winners were announced and frequency;</li> <li>- list of names and identity numbers of prize winners;</li> <li>- list of dates when prizes were handed over to the prize winners.</li> </ul>	3 years

	<ul style="list-style-type: none"> <li>- steps taken by the promoter to contact the winner;</li> <li>- reasons for prize winner not receiving or accepting the prize and steps taken by promoter to hand over the prize</li> </ul>	
	<b>Document Section 45 and Regulation 31 Auctions</b>	
4.6	Written agreement that contains the terms and conditions upon which the auctioneer accepts the goods for sale.	3 years

## Protection of Personal Information Act, 4 of 2013

The Protection of Personal Information Act, 4 of 2013, aims to give effect to the constitutional right to privacy, by safeguarding personal information when processed by a responsible party, subject to justifiable limitations.

Section 14 of the Protection of Personal Information Act states that personal information must not be retained for any longer than is necessary to achieve the purpose for its collection. If there is no legal requirement to keep the information, it should be deleted. The Act therefore places an obligation on the person collecting the data to delete or remove it at a certain time.

Records of personal information must not be retained any longer than is necessary for achieving the purpose for which the information was collected or subsequently processed, unless:

- (a) retention of the record is required or authorised by law;
- (b) the responsible party reasonably requires the record for lawful purposes related to its functions or activities;
- (c) retention of the record is required by a contract between the parties thereto; or
- (d) the data subject or a competent person where the data subject is a child has consented to the retention of the record.

## 5 CO-OPERATIVES

### Co-operatives Act, 34 of 2005

The **Co-operatives Act, 34 of 2005** became effective on 2 May 2007. The Co-operatives Act was amended by the **Co-operatives Amendment Act, 6 of 2013** which became effective on 1 April 2019. The Act promotes the development of sustainable co-operatives that comply with the co-operative principles and establishes a legal framework.

	<b>Document</b>	<b>Retention period</b>
	<b>Reference: Section 21(1) Retention of documents</b>	
5.1	Co-operative must keep at its offices: <ul style="list-style-type: none"> <li>- the constitution and rules, including amendments;</li> <li>- minutes of general meetings;</li> <li>- minutes of meetings of the board of directors</li> <li>- minutes of meetings of the supervisory committee</li> <li>- list of members setting out:               <ul style="list-style-type: none"> <li>• name and address of each member</li> <li>• date on which member became a member</li> <li>• date on which membership was terminated</li> <li>• amount of membership fee paid, number of membership shares owned and number and amount of member loans</li> </ul> </li> </ul>	Indefinite

	<ul style="list-style-type: none"> <li>- register of directors setting out: <ul style="list-style-type: none"> <li>• the name, address and identity number of each director, including former directors</li> <li>• the date on which such directors became or ceased to be directors; and</li> <li>• the name and address of any other co-operative, company or close corporation where both present and former directors are, or were, directors or members</li> </ul> </li> <li>- register of directors' and employees' interests in contracts or undertakings;</li> <li>- adequate accounting records, including records reflecting transactions between each member and the co-operative</li> </ul>	
	<b>Reference: Section 21(2)</b> <b>Co-operative must retain accounting records and financial statements</b>	
5.2	Accounting records and financial statements	5 years after end of the financial year to which they relate, or such longer period as prescribed by the Minister

## 6 CREDIT AGREEMENTS

### National Credit Act, 34 of 2005

The public is protected by the **National Credit Act, 34 of 2005** ("NCA"), which aims to promote and advance the social and economic welfare of consumers by promoting a fair and transparent credit industry and assisting consumers to make more informed decisions before buying goods and services on credit. To ensure that this process occurs, certain documents must be retained.

	<b>Document</b>	<b>Retention period</b>
	<b>Reference: National Credit Regulations, Regulation 55(1)(b)</b>	
6.1	Records of registered activities to be retained by Credit Providers, in respect of each consumer: <ul style="list-style-type: none"> <li>- application for credit;</li> <li>- application for credit declined;</li> <li>- reasons for decline of application for credit;</li> <li>- pre-agreement statement and quote;</li> <li>- documentation in support of steps taken in terms of section 81(2) of the Act;</li> <li>- record of payments made; and</li> <li>- documentation in support of any steps taken after default by consumer.</li> </ul>	3 years from the earliest of the dates on which the registrant created, signed or received the document

	<b>Reference: National Credit Regulations, Regulation 55(1)(c)</b>	
6.2	Records of registered activities to be retained by Credit Providers, in respect of operations: <ul style="list-style-type: none"> <li>- record of income, expenses and cash flow;</li> <li>- credit transaction flows; and</li> <li>- management accounts and financial statements.</li> </ul>	3 years from the earliest of the dates on which the registrant created, signed or received the document
	<b>Reference: National Credit Regulations, Regulation 17(1)</b> <b>Retention period applicable to credit bureau information</b>	
6.3	Details and results of disputes lodged by the consumers	6 months
6.4	Enquiries	1 year
6.5	Payment Profile	5 years
6.6	Adverse classification of enforcement action	1 year
6.7	Adverse classification of consumer behavior	1 year
6.8	Debt restructuring	Until a clearance certificate is issued
6.9	Civil court judgments	The earlier of 5 years or until the judgment is rescinded by a court or abandoned by the credit provider in terms of section 86 of the Magistrate's Court Act, 32 of 1944
6.10	Maintenance judgments	Until the judgment is rescinded by a court
6.11	Administration orders	5 years or until order is rescinded by court
6.12	Sequestration order	5 years or until rehabilitation order is granted
6.13	Rehabilitation orders	5 years
	<b>Reference: National Credit Regulations, Regulation 55(1)(d)</b>	
6.14	Records of registered activities to be retained by Credit Bureaux, <ul style="list-style-type: none"> <li>- All documents relating to disputes, inclusive of but not limited to: <ul style="list-style-type: none"> <li>• documents from the consumer;</li> <li>• documents from the entity responsible for disputed information;</li> <li>• documents pertaining to the investigation of the dispute;</li> </ul> </li> <li>- Correspondence addressed to and received from sources of information as set out in <u>section 70(2)</u> of the Act and Regulation 18(7) pertaining to issues of disputed information</li> </ul>	3 years from the earliest of the dates on which the registrant created, signed or received the document



	Document	Retention period
	<b>Reference: National Credit Regulations, Regulation 55(1)(a)</b>	
6.15	Records of registered activities to be retained by Debt Counsellors, in respect of each consumer <ul style="list-style-type: none"> <li>- application for debt review;</li> <li>- copy of all documents submitted by the consumer;</li> <li>- copy of rejection letter (if applicable);</li> <li>- debt restructuring proposal;</li> <li>- copy of any order made by the tribunal and/or the court; and</li> <li>- copy of clearance certificate.</li> </ul>	3 years from the earliest of the dates on which the registrant created, signed or received the document
	<b>Reference: National Credit Regulations, Regulation 56</b>	
6.16	Records to be kept in terms of section 170 of the Act in respect of each consumer: <ul style="list-style-type: none"> <li>- records of all applications for credit, credit agreements and credit accounts</li> </ul>	3 years from the date of termination of the credit agreement; or, in the case of an application for credit that is refused or not granted for any reason, from the date of receipt of the application

## 7 ELECTRONIC COMMUNICATION

### Electronic Communication and Transaction Act, 25 of 2002

The **Electronic Communication and Transaction Act, 25 of 2002**, regulates electronic communication and prohibits the abuse of information. Certain principles are stated for the electronic collection of personal information and also the timeframe in which this information must be kept.

	Document	Retention period
	<b>Reference: Section 51(5), (7) and (8)</b>	
7.1	Personal information and the purpose for which the data was collected must be kept by the person who electronically requests, collects, collates, processes or stores the information	As long as information is used, and at least 1 year thereafter
7.2	A record of any third party to whom the information was disclosed must be kept for as long as the information is used	As long as information is used and at least 1 year thereafter
7.3	All personal data which has become obsolete	Destroy

## 8 FINANCIAL ADVISORY AND INTERMEDIARY SERVICES

### Financial Advisory and Intermediary Services Act, 37 of 2002

The **Financial Advisory and Intermediary Services Act, 37 of 2002**, seeks to regulate the rendering of certain financial advisory and intermediary services to clients and to provide for matters incidental to these services.

	Document	Retention period
	<b>Reference: Section 18</b>	
8.1	<p>An authorised financial services provider must maintain the following records regarding-</p> <ul style="list-style-type: none"> <li>- known premature cancellations of transactions or financial products by clients of the provider;</li> <li>- complaints received together with an indication whether or not any such complaint has been resolved;</li> <li>- the continued compliance with the requirements referred to in section 8;</li> <li>- cases of non-compliance with this Act, and the reasons for such non-compliance; and</li> <li>- the continued compliance by representatives with the requirements referred to in section 13(1) and (2).</li> </ul>	5 years (except to the extent exempted by the registrar)
	<b>GENERAL CODE OF CONDUCT FOR AUTHORISED FINANCIAL SERVICES PROVIDER AND REPRESENTATIVES Section 3(2)</b>	
8.2	<p><b>Specific duties of provider</b></p> <p>A provider must have appropriate procedures and systems in place to-</p> <ul style="list-style-type: none"> <li>- record such verbal and written communications relating to a financial service rendered to a client as are contemplated in the Act, this Code or any other Code drafted in terms of section 15 of the Act;</li> <li>- store and retrieve such records and any other material documentation relating to the client or financial service rendered to the client; and</li> <li>- keep such client records and documentation safe from destruction.</li> </ul> <p>All such records must be kept for a period after termination, to the knowledge of the provider, of the product concerned or, in any other case, after the rendering of the financial service concerned.</p> <p>Providers are not required to keep the records themselves but must ensure that they are available for inspection within seven days of the registrar's request.</p> <p>Records may be kept in an appropriate electronic or recorded format, which are accessible and readily reducible to written or printed form.</p>	5 years

## 9 FINANCIAL INTELLIGENCE

### Financial Intelligence Centre Act, 38 of 2001

The **Financial Intelligence Centre Act, 38 of 2001**, established a Financial Intelligence Centre and a Money Laundering Advisory Council in order to combat money laundering activities and the financing of terrorist and related activities. The Act imposes certain duties on institutions and people who might be used for money laundering purposes and the financing of terrorist and related activities. The Act became effective on 1 February 2002.

	Document	Retention period
	<b>Reference: Section 22 and 23</b>	
9.1	<p>Whenever an accountable institution establishes a business relationship or concludes a transaction with a client, the accountable institution must keep record of:</p> <ul style="list-style-type: none"> <li>- the identity of the client;</li> <li>- if the client is acting on behalf of another person, <ul style="list-style-type: none"> <li>• the identity of the person on whose behalf the client is acting; and</li> <li>• the client's authority to act on behalf of that other person;</li> </ul> </li> <li>- if another person is acting on behalf of the client— <ul style="list-style-type: none"> <li>• the identity of that other person; and</li> <li>• that other person's authority to act on behalf of the client;</li> </ul> </li> <li>- the manner in which the identity of the persons referred to above was established.</li> <li>- the nature of that business relationship or transaction;</li> <li>- in the case of a transaction— <ul style="list-style-type: none"> <li>• the amount involved; and</li> <li>• the parties to that transaction;</li> </ul> </li> <li>- all accounts that are involved in— <ul style="list-style-type: none"> <li>• transactions concluded by that accountable institution in the course of that business relationship; and</li> <li>• that single transaction;</li> </ul> </li> <li>- the name of the person who obtained the identity of the person transacting on behalf of the accountable institution; and</li> <li>- any document or copy of a document obtained by the accountable institution</li> </ul> <p>The records may be kept in electronic format.</p> <p>Records must be kept:</p> <p>From termination of business relationship</p> <p>From the date the transaction is concluded</p>	<p>5 years</p> <p>5 years</p>

## 10 HEALTH AND SAFETY

### Compensation for Occupational Injuries and Diseases Act, 130 of 1993

The **Compensation for Occupational Injuries and Diseases Act, 130 of 1993**, provides for compensation for disablement caused by occupational injuries or diseases sustained or contracted by employees in the course of their employment or for death by these injuries at their place of work.

The Act states that certain records that relate to the earnings should be retained.

	Document	Retention period
	<b>Reference: Section 81(1) and (2)</b>	
10.1	A register or other record of the earnings and other prescribed particulars of all the employees	4 years after the date of the last entry in that register or record <sup>1</sup>

### Occupational Health and Safety Act, 85 of 1993

The **Occupational Health and Safety Act, 85 of 1993**, was enacted to provide for the health and safety of employees at work and for people using plant and machinery and working in other hazardous employment conditions. Certain documents have to be kept based on the Administrative Regulations.

	Document	Retention period
	<b>Reference: General Administration Regulations 2003, 9(1) and 5(1)</b>	
10.2	An employer or user shall keep at a workplace or section of a workplace, as the case may be, a record in the form of <u>Annexure 1</u> for a period of at least three years, which record shall be open for inspection by an inspector, of all incidents which he or she is required to report in terms of <u>section 24</u> of the Act and also of any other incident which resulted in the person concerned having had to receive medical <u>treatment other than first aid</u>	3 years
10.3	A health and safety committee shall keep record of each recommendation made to an employer in terms of issues affecting the health of employees and of any report made to an inspector as contemplated in section 20(2) of the Act	3 years
	<b>Reference: Asbestos Regulations, 2001, Regulation 16(e) and (f)</b>	
10.4	Records of assessments and air monitoring, and the asbestos inventory	Min of 40 years
10.5	Medical surveillance records	Min of 40 years
	<b>Reference: Hazardous Biological Agents Regulations, 2001, Regulation 9(1) and (2)</b>	

<sup>1</sup> The Compensation for Occupational Injuries and Diseases Amendment Bill 2018 proposes to increase the period for which documents should be retained from 4 years to 5 years. The effective date of the Bill has not yet been promulgated

10.6	Records of risk assessments and air monitoring results	40 years
10.7	Medical surveillance records	40 years
	<b>Reference: Hazardous Chemical Substance Regulations, 1995, Regulation 9</b>	
10.8	Records of assessments and air monitoring	30 years
10.9	Medical surveillance records	30 years

	<b>Reference: Lead regulations, 2001, Regulation 10</b>	
10.10	Records of assessments and air monitoring	40 years
10.11	Medical surveillance records	40 years
	<b>Reference: Noise Regulations (MOSA) Regulation 11</b>	
10.12	All records of assessments and noise monitoring	40 years
10.13	All medical surveillance records, including the baseline audiogram of every employee	40 years

## 11 INSOLVENCY AND LIQUIDATION

### Insolvency Act, 24 of 1936

The **Insolvency Act, 24 of 1936**, states that various documents relating to insolvent estates can only be destroyed after a certain period; care should therefore be taken that the documents are kept until this period has passed.

	Document	Retention period
	<b>Reference: Section 155</b>	
11.1	In respect of all insolvent estates which have been finally liquidated or in course of liquidation at the commencement of this Act, and only with the permission of the Master, the trustee may destroy all books and records in his possession relating to the estate	6 months from the confirmation by the Master of the final trustees' account
11.2	In respect of all insolvent estates which have been finally liquidated, all records in his office relating to the estate of that insolvent	After 5 years have lapsed from the rehabilitation of an insolvent

## 12 LABOUR RELATIONS

Employee relations are governed by a variety of legislation, including the Basic Conditions of Employment Act and the Labour Relations Act.

### Basic Conditions of Employment Act, 75 of 1997

The **Basic Conditions of Employment Act, 75 of 1997**, states that various documents relating to employees should be kept for future reference.

	Document	Retention period
	<b>Reference: Section 29(4)</b>	
12.1	Written particulars of employee must be kept after termination of employment	3 years after the termination of employment.
	<b>Reference: Section 31</b>	
12.2	Employee's name and occupation	3 years from

12.3	Time worked by each employee	the date of the last entry in the record.
12.4	Remuneration paid to each employee	
12.5	Date of birth of any employee under 18 years of age	
12.6	Any other prescribed information	

A reference exists that an employer who keeps records in terms of this section is not required to keep any other record of time worked and remuneration paid as required by any other employment law.

## Employment Equity Act, 55 of 1998

The **Employment Equity Act, 55 of 1998**, provides for employment equity and applies to employers and employees. The Act has certain requirements with regard to the retention of certain documents.

	Document	Retention period
	<b>Reference: Section 26</b>	
12.7	An employer must establish and maintain records in respect of its workforce, its employment equity plan and other records relevant to its compliance with this Act.	5 years after expiry of the plan
	<b>Employment Equity Regulations, 2014</b> <b>Reference: Regulation 9(3)</b>	
12.8	A designated employer must retain their Employment Equity Plan	
	<b>Reference: Section 21</b> <b>Employment Equity Regulations, 2014</b> <b>Reference: Regulation 10(9)<sup>2</sup></b>	
12.9	A designated employer must submit a report to the Director General once every year. This report should be retained after submission to the Director General	5 years after it has been submitted to the Director-General.

## Labour Relations Act, 66 of 1995

The **Labour Relations Act, 66 of 1995**, applies to employees, employers, trade unions and employers' organisations and provides a framework where the parties can collectively bargain regarding remuneration, basic conditions of service and other matters of importance.

Various records relating to the structures created in this Act have to be kept for future reference.

	Document	Retention period
	<b>Reference: Section 53(4)</b>	
12.10	Every Council must preserve the following documents in original or reproduced form: <ul style="list-style-type: none"> <li>- books of account</li> <li>- supporting vouchers</li> <li>- income and expenditure statements</li> <li>- balance sheets</li> <li>- auditor's reports</li> <li>- minutes of its meetings (Reference: Section 54)</li> </ul>	3 years from the end of the financial year to which they relate

<sup>2</sup> Draft Employment Equity Regulations has been published for comments and the reference to Regulation 10(9) is proposed to be changed to Regulation 10(14). The effective date has not yet been published.

	<b>Reference: Section 98(4)</b>	
12.11	Registered trade unions and registered employers' organisation must preserve the following documents in original or reproduced form: <ul style="list-style-type: none"> <li>- books of account</li> <li>- supporting vouchers</li> <li>- records of subscriptions or levies paid by its members</li> <li>- income and expenditure statements</li> <li>- balance sheets</li> <li>- auditor's reports</li> </ul>	3 years from the end of the financial year to which they relate.
	<b>Reference: Section 99<sup>3</sup></b>	
12.12	Registered trade unions and registered employers' organisation must keep a list of its members	Indefinite
12.13	Attendance register, minutes or any other prescribed records of its meetings, in an original or reproduced form from the end of the financial year to which they relate	3 years
12.14	Registered trade unions and registered employers' organisation must keep the ballot papers or any documentary or electronic record of the ballot for a period of three years from the date of every ballot	3 years
	<b>Reference: Section 205(1) and (2)</b>	
12.15	Every employer must keep the records in their original form or a reproduced form that an employer is required to keep in compliance with any applicable: <ul style="list-style-type: none"> <li>- collective agreement;</li> <li>- arbitration award;</li> <li>- determination made in terms of the Wage Act</li> </ul>	3 years from the date of the event or end of the period to which they relate
	<b>Reference: Section 205(3)</b>	
12.16	Employer must keep prescribed details of any strike, lock-out or protest action involving its employees	Indefinite
	<b>Schedule 8, Section 5</b>	
12.17	Employers should keep records for each employee specifying the nature of any disciplinary transgressions, the actions taken by the employer and the reasons for the actions	Indefinite
	<b>Schedule 3, Section 8(a)</b>	
12.18	The Commission must keep the following records: Books of accounts Records of income, expenditure, assets and liabilities	Indefinite

## Unemployment Insurance Act, 63 of 2002

The **Unemployment Insurance Act, 63 of 2002**, applies to all employers and workers, but not to

–

- Workers working less than 24 hours a month for an employer;
- Learners;
- Public servants;
- Foreigners working on contract;
- Workers who get a monthly State (old age) pension; or
- Workers who only earn commission.

Domestic employers and their workers have also been included under the scope of the Act since 1 April 2003.

<sup>3</sup> The Labour Relations Amendment Act 8 of 2018 substituted this section with effect from 1 January 2019

	Document	Retention period
	<b>Reference: Section 56(2) (c)</b>	
12.19	Employers must maintain personal records of each of their current employees in terms of <ul style="list-style-type: none"> <li>- names;</li> <li>- identification numbers;</li> <li>- monthly remuneration; and</li> <li>- address where the employee is employed</li> </ul>	Refer to 16.7 under Income Tax Act

## 13 NON-PROFIT ORGANISATIONS

### Non-Profit Organisations Act, 71 of 1997

The **Non-Profit Organisations Act, 71 of 1997** (NPO) established the Non-profit organisations directorate and regulates non-profit organisations (NPO's) in South Africa, the Act became effective on 1 September 1998. The directorate provides a voluntary registration facility that enhances the credibility of the registered NPO as it reports to a public office.

The NPO Directorate, as a public office, holds information about registered NPOs for the public to access. This thus, increases the transparency and accountability of the organisation beyond its immediate role-plays. This accountability and transparency improves the governance of an organisation as it is also expected that a registered NPO must comply with the requirements of the NPO Act.

	Document	Retention period
	<b>Reference: Accounting records and reports Section 17(3)</b>	
13.1	3) Every registered nonprofit organisation must preserve each of its books of account, supporting vouchers, records of subscriptions or levies paid by its members, income and expenditure statements, balance sheets and accounting officer's reports, in an original or reproduced form, for the prescribed period	Regulations not available <sup>4</sup>

## 14 SECTIONAL TITLES SCHEMES

The **Sectional Titles Act, 95 of 1986** provides for the division of buildings into sections and common property and for the acquisition of separate ownership in sections coupled with joint ownership in common property. The Act became effective on 1 June 1998. On 7 October 2016 the **Sectional Titles Schemes Management Act, 8 of 2011** amended, removed and replaced the scheme governance provisions in the Sectional Titles Act. The Act and its regulations were effective as from 7 October 2016.

### Sectional Titles Schemes Management Act, 8 of 2011

	Document	Retention period
	<b>Reference: Sectional Titles Schemes Management Regulations 26(3)</b>	
14.1	The body corporate must ensure that all the body corporate's	Six years after

<sup>4</sup> [Department of Social Development webpage](#) state that the documents should be retained for 5 years



	books of account and financial records are retained.	completion of the transactions, acts or operations to which they relate.
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## 15 PUBLIC SECTOR ENTITIES

*(Includes municipalities, municipal entities, departments, trading entities, constitutional institutions, public entities and provincial legislature)*

### Public Finance Management Act, 1 of 1999 (PFMA)

The PFMA, applies to departments, public entities listed in Schedule 2 or 3; constitutional institutions; and the provincial legislatures, subject to subsection (2).

Section 40(1)(a) of the PFMA states that: *“The accounting officer for a department, trading entity or constitutional institution must keep full and proper records of the financial affairs of the department, trading entity or constitutional institution in accordance with any prescribed norms and standards.”*

Section 55(1)(a) of the PFMA states that: *“The accounting authority for a public entity must keep full and proper records of the financial affairs of the public entity.”*

The Treasury Regulations, Regulation 17.2.1 and 17.2.2 states the following:

*“17.2.1 Accounting officers of institutions must, subject to the provisions of the relevant national or provincial legislation, retain all financial information in its original form, as follows –*

*(a) information relating to one financial year – for one year after the audit report for the financial year in question has been tabled in Parliament or the provincial legislature; or*

*(b) information relating to more than one financial year – for one year after the date of the audit report for the last of the financial years to which the information relates.*

*17.2.2 After the expiry of the above retention periods, the information may, if required, be secured in an alternative form that ensures the integrity and reliability of the data and ensures that the information can be reproduced, if necessary, as permissible evidence in a court of law.”*

Treasury Regulation 17.2.3 further states “Irrespective of paragraph 17.2.1, the following standards apply to the retention of certain types of record –

	Type of record	Retention period
	<b>Reference: Treasury Regulations, Regulation 17(2)</b>	
15.1	General ledger and cash books or similar records	15 years
15.2	Main transaction summary records, including general journals and transaction summaries Internal audit reports System appraisals	10 years
15.3	Primary evidentiary records, including copies of forms issued for value, vouchers to support payments made, pay sheets, returned warrant vouchers or cheques, invoices and similar records associated with the receipt or payment of money Subsidiary ledgers, including inventory cards and records relating to assets no longer held or liabilities that have been discharged	5 years
15.4	Supplementary accounting records, including, for example, cash register strips, bank statements and time	5 years

	sheets	
15.5	General and incidental source documents not included above, including stock issue and receivable notes, copies of official orders (other than copies for substantiating payments or for unperformed contracts), bank deposit books and post registers	5 years

### Municipal Finance Management Act, 56 of 2003 (MFMA)

The MFMA applies to all municipalities and municipal entities and has the goal of securing sound and sustainable management of the financial affairs of municipalities and other institutions in the local sphere of government.

With regard to the retention of documents, it states in Section 62(1) (b) that:

*“The accounting officer of a municipality is responsible for managing the financial administration of the municipality, and must for this purpose take all reasonable steps to ensure that full and proper records of the financial affairs of the municipality are kept in accordance with any prescribed norms and standards.”*

### National Archives and Records Act, 43 of 1996

The National Archives and Records of South Africa was established as a branch of the Republic. Section 3(b)

of the National Archives and Records Act states that the objective and function of the National Archives is to *“ensure the proper management and care of all public records”*.

In terms of management of public records, section 13(1) and (2) states:

*“(1) Subject to the provisions of this Act, the National Archivist shall be charged with the proper management and care of public records in the custody of governmental bodies.*

*(2) Without limiting the generality of subsection (1)-*

*(a) no public record under the control of a governmental body shall be transferred to an archives repository, destroyed, erased or otherwise disposed of without the written authorisation of the National Archivist, issued subject to-*

*(i) section 6 (4) (e) of this Act; and*

*(ii) a final ruling by the Minister when unresolvable differences arise between the National Archivist and the Council.”*

All governmental bodies shall comply with the National Archives and Records Act for retention of documents.

## 16 TAX

The **Income Tax Act, 58 of 1962**, is the Act that governs all the laws relating to income taxes and donations and the **Value Added Tax Act, 89 of 1991**, provides for the taxation of the supply of goods and services as well as the importation of goods. The **Tax Administration Act, 28 of**

**2011**, has been effective from 1 October 2012. This Act has not removed the retention of documentation requirements from the Income Tax Act and the Value Added Tax Act and has included the requirements for document keeping in the Act.

## Tax Administration Act, 28 of 2011

Section 29 of the Tax Administration Act (TAA), 28 of 2011, contains the general record retention requirements for all Acts administered by the Commissioner (Schedule 1 of the South African Revenue Service Act, 1997) and states that a person must keep the records, books of account or documents that:

- enable the person to observe the requirements of a Tax Act;
- are specifically required under a Tax Act or by the Commissioner by public notice; and
- will enable the South African Revenue Service (SARS) to be satisfied that the person has observed these requirements.

	Document	Retention period
	<b>Reference: Section 29(3)(a)</b>	
16.1	Taxpayers that have submitted a return	5 years from date of submission
	<b>Reference: Section 29(3)(b)</b>	
16.2	Taxpayers who were meant to submit a return, but haven't for that period	Indefinite, until the return is submitted – then the 5-year rule applies
	<b>Reference: Section 29(3)(c)</b>	
16.3	Taxpayers who were not required to submit a return, but received income, had capital gains/losses or engaged in any other activity that is subject to tax or would be subject to tax but for the application of a threshold or exemption	5 years from the end of the relevant tax period
	<b>Reference: Section 32(a)</b>	
16.4	A person who has been notified or is aware that the records are subject to an audit or investigation	In addition to the 5-year rule, records must be retained until the audit is concluded or the assessment or decision becomes final. In this regard the extended retention period will apply irrespective of whether the assessments have prescribed in terms of section 99.
	<b>Reference: Section 32(b)</b>	
16.5	A person who has lodged an objection or appeal against an assessment or decision under the TAA	In addition to the 5-year rule, records must be retained until the audit is concluded or the assessment or decision becomes final
	<b>Reference: Section 102</b>	
16.6	While this is not a specific requirement in terms of the TAA that records must be retained for longer, on the basis that a taxpayer bears the onus of proving a valuation, an exemption and a deduction, where any of these items form part of a calculation for purposes of calculating the base cost for capital gains tax purposes, it is recommended that a taxpayer retain records for such longer period as will enable the taxpayer to discharge this onus	In addition to the 5-year rule, records must therefore be retained until the base cost calculation must be proved to SARS in the event of a capital gain or capital loss

### Form in which records may be retained

Aside from the general record retention requirements, taxpayers must also be aware of the form in which records must be retained. According to section 30 of the TAA, records must be kept:

- a) in their original form in an orderly fashion at a safe place,
- b) in any other form (including electronic) as may be prescribed by the SARS Commissioner in a public notice, or
- c) in a form specifically authorised by a senior SARS official.

The SARS Commissioner published [notice 787](#) to provide taxpayers with more detailed guidance regarding the retention of documents in electronic form. As a general matter, electronic records must be kept at a place physically located in South Africa. However, a senior SARS official may authorise for electronic records to be kept at a place physically located outside of South Africa if certain requirements are met. Additionally, records retained in an electronic format or computer software commonly recognised in South Africa are subject to less stringent requirements, for the purposes of the public notice.

Furthermore the SARS Commissioner published [notice 1334](#) which prescribes the records to be kept specifically for transfer pricing purposes. Transfer pricing can be described in broad terms as the process by which entities set the prices (i.e. arm's length) at which they transfer goods or services between each other.

### Income Tax Act, 58 of 1962

	Document	Retention period
	In addition to the records required in Chapter 4, part A of the TAA, every employer must keep the records as indicated below	
	<b>Reference: 4<sup>th</sup> Schedule, para 14(1)</b>	
16.7	In addition to the records required in section 29 of the TAA, in respect of each employee the employer shall keep a record showing (para 14(1)(a)-(d)): (a) amount of remuneration paid or due by him to the employee; (b) the amount of employees' tax deducted or withheld from the remuneration paid or due; (c) the income tax reference number of that employee; (d) any further prescribed information	5 years from the date of submission of the return evidencing payment (i.e. EMP201) and 5 years from the date of submission of the return required by gazette (i.e. EMP501)
	<b>Reference: 6<sup>th</sup> Schedule, para 14(a) – (d)</b>	
16.8	Notwithstanding the provisions of Part A of Chapter 4 of the TAA, a registered micro business must only retain a record of: (a) amounts received by that registered micro business during a year of assessment; (b) dividends declared by that registered micro business during a year of assessment; (c) each asset of that registered micro business as at the end of a year of assessment with a cost price of more than R10 000; and (d) each liability of that registered micro business as at the end of a year of assessment that exceeded R10 000	5 years from date of submission or 5 years from end of the relevant tax year depending on type of transaction

### Value Added Tax Act, 89 of 1991

	Document	Retention period
	In addition to the records required in Chapter 4, part A of the TAA, every vendor must keep the records as indicated below	

	<b>Reference: Section 11(3)</b>	
16.9	<p>Where the zero rate is applied by any vendor documentary proof must be obtained and retained to substantiate the entitlement to the zero rate</p> <p>The SARS Commissioner published <a href="#">Interpretation Note 31</a> as guidance to set out the documentary proof that is acceptable to the Commissioner as contemplated in section 11(3), in instances where goods or services are supplied at the zero rate.</p>	5 years from the date of submission of the return
	<b>Reference: Section 15(9)</b>	
16.10	Where a vendor's basis of accounting is changed, the vendor shall prepare lists of debtors and creditors showing the amounts owing by the debtors and owing to the creditors at the end of the tax period immediately preceding the changeover period	5 years from date of Submission of the return
	<b>Reference: Section 16(2)</b>	
16.11	<p>Records must be provided where a VAT vendor wish to deduct input tax in respect of a supply of goods or services, or import goods, or claim any other deductions for VAT purposes</p> <ul style="list-style-type: none"> <li>- tax invoice/debit note/credit note of that supply in accordance with section 20 or 21</li> <li>- where a tax invoice/credit note/debit note has been issued in relation to a supply by an agent or to an agent or a bill of entry as described in the Customs and Excise Act, the agent shall maintain sufficient records to enable the name, address and VAT registration number of the principal to be ascertained</li> <li>- for a supply of second-hand goods or a supply under an instalment credit agreement records must be maintained as referred to in section 20(8)</li> <li>- for imported goods, a bill of entry, or other documents prescribed by the Custom and Excise Act and proof, by virtue of retention of the receipt of payment, that the VAT charge has been paid to SARS</li> <li>- for agent/principal relationship where imported goods are supplied, a bill of entry or other document prescribed in terms of the Customs and Excise Act as contemplated in section 54(2A) is held by the agent, and a statement as contemplated in section 54(3)(b) is held by the vendor at the time that any return in respect of that importation is furnished</li> <li>- a ruling (requested no later than two months before expiry) of the five-year period and such documents to which the ruling relates</li> </ul> <p>Section 16 refers to Section 55 of the VAT Act and Part A of Chapter 4 of the TAA insofar that even if provided to SARS, the Commissioner may disallow a deduction for input tax unless the tax invoice//debit note/credit note, bill of entry or documents concerned is retained by the taxpayer in accordance</p>	At the time of that a return is furnished and a further 5 years from date of submission of the return
	<b>Reference: Section 55(1)(a)</b>	
16.12	Vendors are obliged to keep the following records in addition to those required under part A of Chapter 4 of the	5 years from date of Submission of the

	<p>TAA:</p> <ul style="list-style-type: none"> <li>- record of all goods and services supplied by and to the vendor showing the goods and services, the rate of tax applicable to the supply and the suppliers or their agents, in sufficient detail to enable the goods and services, the rate of tax, the suppliers or the agents to be readily identified by the Commissioner and all invoices, tax invoices, credit notes, debit notes, bank statements, deposit slips, stock lists and paid cheques</li> <li>- a record of all importation of goods required to be obtained relating thereto in terms of section 16(2)(d)</li> <li>- documentary proof required to be obtained and retained in terms of section 16(2)(f) (i.e. where tax fractions apply) and 16(2)(g) (i.e. alternative documentary proof obtained due to being unable to obtain required documents)</li> <li>- the charts and codes of account, the accounting instruction manuals and the system and programme documentation which describes the accounting system used for each tax period in the supply of goods and services;</li> <li>- any list required to be prepared in accordance with section 15(9) (i.e. vendor's basis of accounting is changed)</li> <li>• any documentary proof required to be obtained and retained in accordance with section 11(3) (i.e. zero rate is applied)</li> </ul>	return
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### Transfer Duty Act, 40 of 1949

	Document	Retention period
16.13	In addition to the records required to be kept by Chapter 4, part A of the TAA, every auctioneer or person who has effected a sale (or other type of transfer) of property on behalf of some other person shall keep the below	
	<b>Reference: Section 15(1)</b>	
16.14	<p>A record of the sale, including</p> <ul style="list-style-type: none"> <li>- a description of the property sold</li> <li>- the person by whom the property has been sold</li> <li>- the person to whom the property has been sold; and</li> <li>- the price paid for the property</li> </ul>	5 years from date on which the sale was effected
	<b>Reference: SARS Transfer Duty Guide</b>	
16.15	<p>In terms of the <a href="#">SARS Transfer Duty Guide</a> conveyancers, auctioneers, brokers and other agents who are required to maintain the records of all sales made by them on behalf of other persons must also keep record of the</p> <ul style="list-style-type: none"> <li>- signed transfer duty returns submitted to SARS</li> <li>- manual and/or eFiling receipts received from SARS regarding payment of the duty</li> <li>- exemption certificates (if applicable)</li> </ul>	5 years from date on which these records were submitted to, or received from SARS

## Securities Transfer Tax Administration Act, 26 of 2007

	Document	Retention period
	In addition to the records required to be kept under section 29 of the TAA, the below-mentioned persons must retain sufficient record of a security transfer in order to enable that person to observe the requirements of this Act and satisfy the Commissioner that the requirements of this Act have been met	
	<b>Reference: Section 13(1)</b>	
16.16	Any member, participant or person to whom a listed security is transferred must keep, for a period of five years, such record of every transfer which has been effected by the member, participant or person to whom the security has been transferred as may be required to enable the member, participant or person to whom the security has been transferred, as the case may be, to observe the requirements of this Act and to enable the Commissioner to be satisfied that those requirements have been observed	5 years from date of transfer of the security
	<b>Reference: Section 13(2)</b>	
16.17	A company or close corporation that issued an unlisted security must keep records of every transfer of an unlisted security issued by it as may be required to enable the company to observe the requirements of this Act and to enable the Commissioner to be satisfied that those requirements have been observed  These records must be obtained from a person to whom an unlisted security is transferred, who is required to inform the <del>forementioned company of the transfer</del>	5 years from date of transfer of the security

## Merchant Shipping (International Oil Pollution Compensation Fund) Administration Act, 35 of 2013

	In addition to the documentary retention requirements under Chapter 4, part A of the TAA, every person receiving 'contributing oil' <sup>5</sup> in the Republic must keep following additional records	
	<b>Reference: Sections 5(a) and (b)</b>	
16.18	Every person receiving 'contributing oil' in South Africa must keep the following records and documents (a) import declarations required for customs purposes for contributing oil, and (b) records and books of account that set out the type and quantity of the contributing oil in respect of which the levy imposed by section 2 of the Merchant Shipping (International Oil Pollution Compensation Fund) Contributions Act, 2013 may be payable	3 years from date of submission of the return

<sup>5</sup> As defined in section 1 of the Merchant Shipping (International Oil Pollution Compensation Fund) Contributions Act, 2013]

## Mineral and Petroleum Resources Royalty (Administration) Act, 29 of 2008

	Document	Retention period
	In addition to the records required to be kept under section 29 of the TAA, a person registered in terms of this Act must retain the following records	
	<b>Reference: Section 8(a) - (f)</b>	
16.19	<p>A registered person in terms of this Act must retain the following records in respect of mineral resources extracted from within South Africa</p> <ul style="list-style-type: none"> <li>(a) particulars of “earnings before interest and taxes” as mentioned in section 5 of the Mineral and Petroleum Resources Royalty Act No 28 of 2008 (Royalty Act) with sufficient detail to identify all the gross sales, income and allowable deductions in respect of those earnings</li> <li>(b) particulars of “gross sales” as mentioned in section 6 of the Royalty Act with sufficient detail to identify all transferred mineral resources in respect of those gross sales and the persons acquiring those transferred mineral resources</li> <li>(c) the quantity of mineral resources — <ul style="list-style-type: none"> <li>(i) extracted but not transferred; and</li> <li>(ii) transferred, by that registered person with sufficient detail to identify the mineral resources extracted but not transferred and the mineral resources transferred</li> </ul> </li> <li>(d) the accounting income with sufficient detail to identify the “earnings before interest and taxes” as mentioned in section 5 of the Royalty Act that relate to that accounting income</li> <li>(e) any ledger, cash book, journal, cheque book, bank statement, deposit slip, paid cheque, invoice, other book of account or financial statement; and</li> <li>(f) any information specifically required by the Commissioner by public notice</li> </ul>	Previously 3 years but now 5 years from date of submission of the return on the basis of being amended to be a self-assessed tax

## Diamond Export Levy (Administration) Act, 14 of 2007

	Document	Retention period
16.20	In addition to the records required to be kept under section 29 of the TAA, a person registered in terms of this Act must retain the following records	
	<b>Reference: Section 7(a) - (i)</b>	
16.21	<p>A person registered in terms of this Act must retain the following records</p> <ul style="list-style-type: none"> <li>- the original note of receipt or purchase in respect of a unpolished diamond as described in section 56 of the Diamonds Act No. 56 of 1986 (the Diamonds Act)</li> <li>- a register in respect of unpolished diamonds as described in section 57 of the Diamonds Act</li> <li>- a record of all unpolished diamonds imported into or exported from the Republic by that person with sufficient</li> </ul>	3 years from date of submission of the return



detail to identify diamonds, values, purchasers and sellers		
	involved	
	<ul style="list-style-type: none"> <li>- a copy of any temporary exemption certificate described in section 5 of the Diamond Export Levy Act No. 15 of 2007 (the Levy Act)</li> <li>- a copy of any exemption from section 48A of the Diamonds Act pursuant to section 74 of that Act</li> <li>- a copy of any permit to export, granted pursuant to section 26(h) of the Diamonds Act</li> <li>- any ledger, cash book, journal, cheque book, bank statement, deposit slip, paid cheque, invoice, other book of account, or financial statement; and</li> <li>- any other information required by the Commissioner or the South African Diamond and Precious Metals Regulator</li> </ul>	

## 17 TRUST PROPERTY CONTROL ACT

The **Trust Property Control Act, 57 of 1988**, is the Act that regulates the control of trust property and related matters and has been effective from the 31<sup>st</sup> of March 1989. The Act does not deal with retention as such, but rather has a requirement that documents cannot be destroyed prior to a certain period without the consent of the Master.

	Document	Retention period
	<b>Reference: Section 17</b>	
17.1	A trustee shall not without the written consent of the Master destroy any document which serves as proof of the investment, safe custody, control, administration, alienation or distribution of trust property before the expiry of a period of five years from the termination of a trust.	5 years from date from termination of a trust