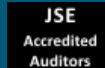




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# Policies on the retention of records

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## RETENTION OF RECORDS

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

### 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: - Resolutions adopted - Document made available to holders of securities	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</li> </ul>	3 years



	frequency; - list of names and identity numbers of prize winners; - list of dates when prizes were handed over to the prize winners;	
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	- steps taken by the promoter to contact the winner; - reasons for prize winner not receiving or accepting the prize and steps taken by promoter to hand over the prize	
	<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.

	Document	Retention period
	<b>Reference: Section 21(1)</b> <b>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
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## 6 CREDIT AGREEMENTS

### National Credit Act, 34 of 2005

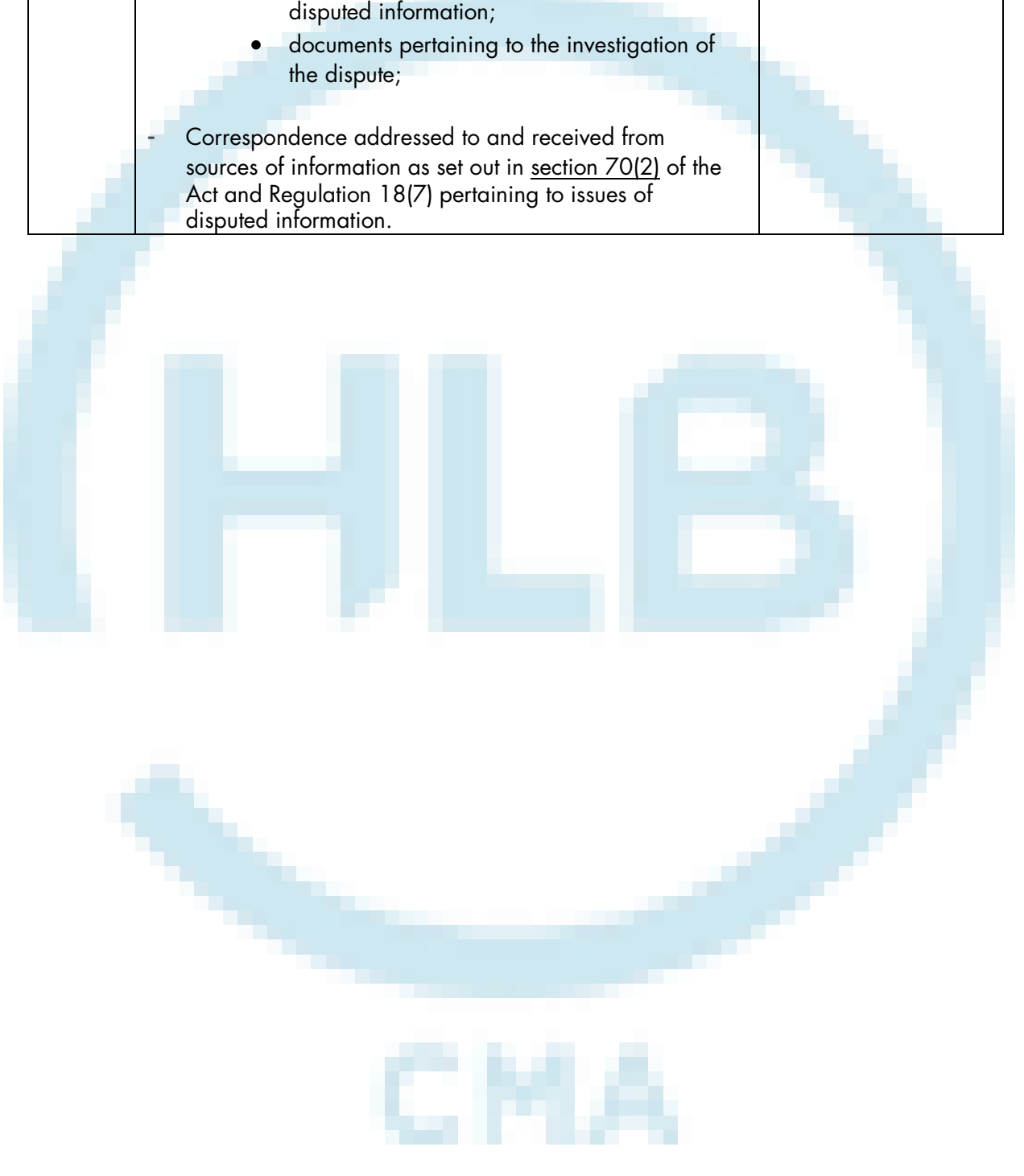
The public is protected by the **National Credit Act, 34 of 2005** ("NCA"), which aims to promote and advance the social and economic welfare of consumers by promoting a fair and transparent credit industry and assisting consumers to make more informed decisions before buying goods and services on credit.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

	Document	Retention period
	<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

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	<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>	

6.1 4	<p>Records of registered activities to be retained by Credit Bureaux,</p> <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
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	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</b>	
	<b>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:            From termination of business relationship            From the date the transaction is concluded</p>	<p>5 years 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 treatment other than first aid.	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 <u>section 20(2)</u> 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

	Reference: Hazardous Biological Agents Regulations, 2001, Regulation 9(1) and (2)	
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<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
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	<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 Reference: Regulation 9(3)</b>	
12.8	A designated employer must retain their Employment Equity Plan	
	<b>Reference: Section 21 Employment Equity Regulations, 2014 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.

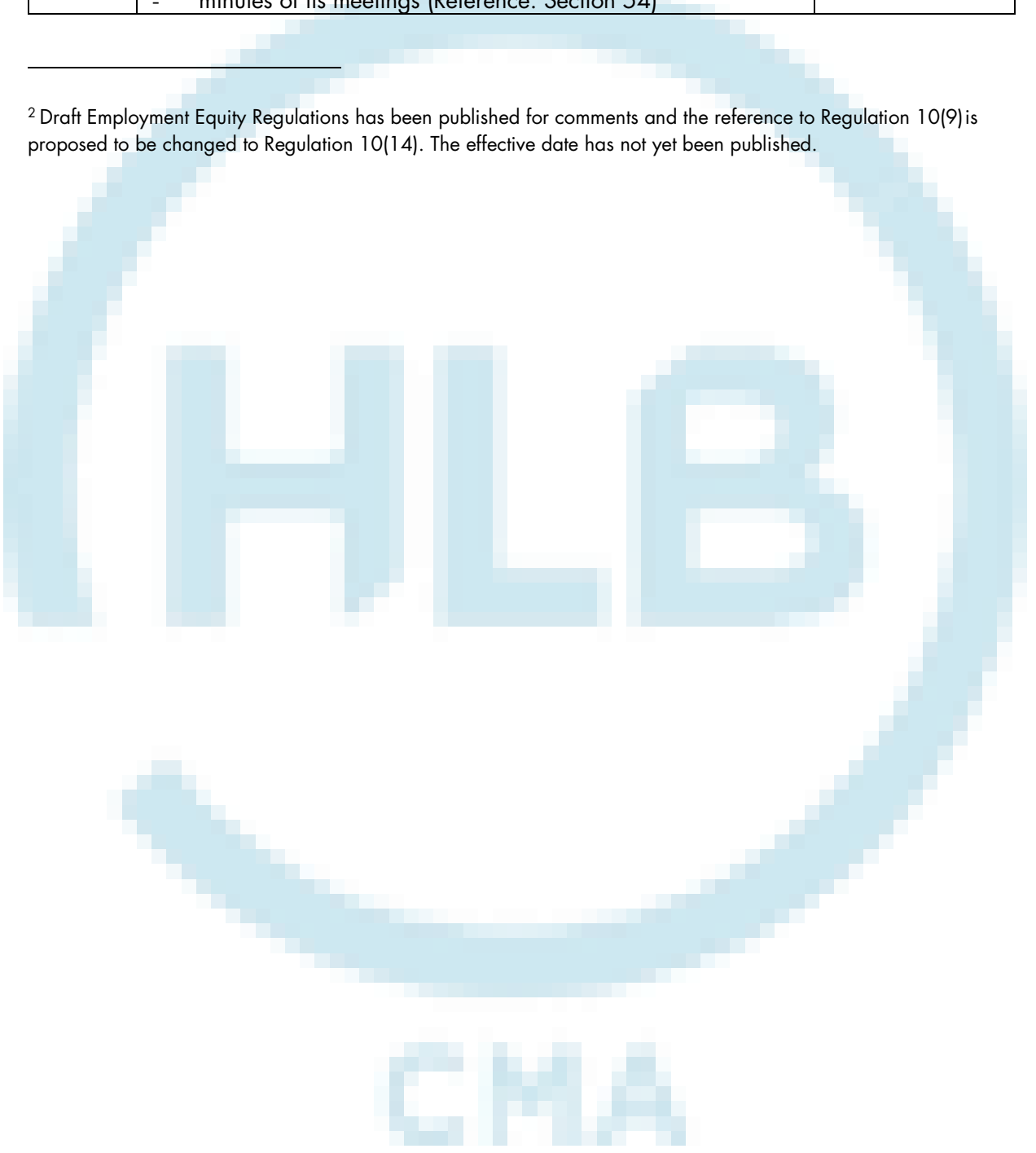
Various records relating to the structures created in this Act have to be kept for future reference.

	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
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<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: - books of account - supporting vouchers - records of subscriptions or levies paid by its members - income and expenditure statements - balance sheets - auditor's reports	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: - collective agreement; - arbitration award; - determination made in terms of the Wage Act	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.

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<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 14.7 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
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	<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 sheets	5 years
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
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### 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)): <ol style="list-style-type: none"> <li>(a) amount of remuneration paid or due by him to the employee;</li> <li>(b) the amount of employees' tax deducted or withheld from the remuneration paid or due;</li> <li>(c) the income tax reference number of that employee;</li> <li>(d) any further prescribed information</li> </ol>	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: <ol style="list-style-type: none"> <li>(a) amounts received by that registered micro business during a year of assessment;</li> <li>(b) dividends declared by that registered micro business during a year of assessment;</li> <li>(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</li> <li>(d) each liability of that registered micro business as at the end of a year of assessment that exceeded R10 000</li> </ol>	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	Where the zero rate is applied by any vendor documentary proof must be obtained and retained to substantiate the entitlement to the zero rate  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.	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>	



<p>16.1 1</p>	<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 with these provisions</p>	<p>At the time of that a return is furnished and a further 5 years from date of submission of the return</p>
	<p><b>Reference: Section 55(1)(a)</b></p>	
<p>16.1 2</p>	<p>Vendors are obliged to keep the following records in addition to those required under part A of Chapter 4 of the</p>	<p>5 years from date of submission of the</p>

	<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	A record of the sale, including <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	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 <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> </ul>	5 years from date on which these records were submitted to, or received from SARS

	- exemption certificates (if applicable)	
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## 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 aforementioned company of the transfer	5 years from date of transfer of the security

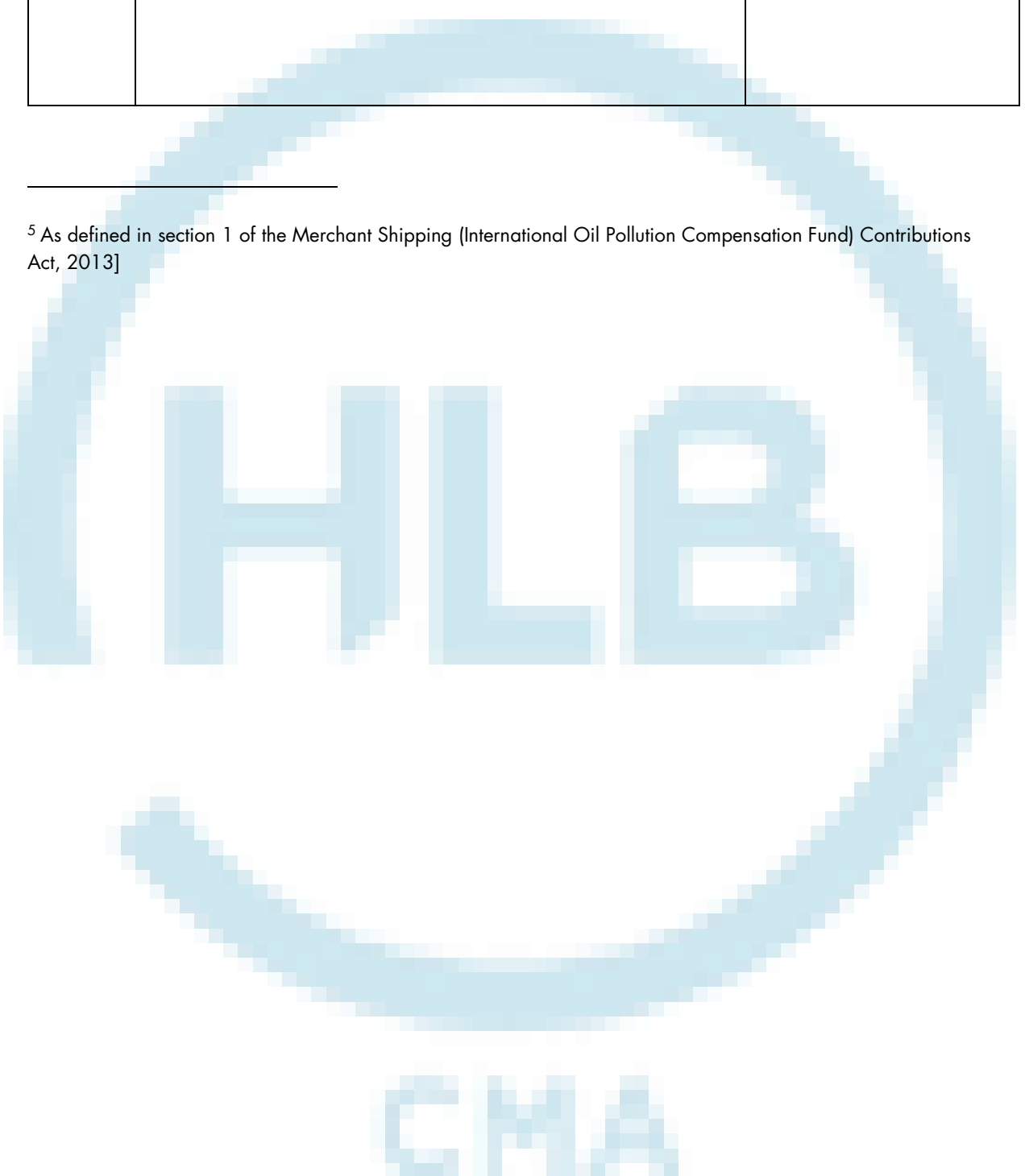
## Merchant Shipping (International Oil Pollution Compensation Fund) Administration Act, 35 of 2013

	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	3 years from date of submission of the return

	Compensation Fund) Contributions Act, 2013 may be payable	
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<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> <p>(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</p> <p>(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</p> <p>(c) the quantity of mineral resources —</p> <p>(i) extracted but not transferred; and</p> <p>(ii) transferred, by that registered person with sufficient detail to identify the mineral resources extracted but not transferred and the mineral resources transferred</p> <p>(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</p> <p>(e) any ledger, cash book, journal, cheque book, bank statement, deposit slip, paid cheque, invoice, other book of account or financial statement; and</p> <p>(f) any information specifically required by the Commissioner by public notice</p>	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
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	<p>detail to identify diamonds, values, purchasers and sellers involved</p> <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>	
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## 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 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